

**EXHIBIT A**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

<b>IN RE: ELECTRICAL CARBON PRODUCTS ANTITRUST LITIGATION</b>	<b>:</b>	<b>MDL NO. 1514</b>
	<b>:</b>	<b>MASTER CIVIL NO.</b>
	<b>:</b>	<b>03-2182 (JBS)</b>

**ORDER GRANTING PRELIMINARY APPROVAL OF  
PROPOSED SETTLEMENTS BETWEEN CLASS PLAINTIFFS AND  
DEFENDANTS, APPROVING FORMS OF NOTICE  
AND AUTHORIZING DISSEMINATION OF CLASS  
NOTICE AND PROOF OF CLAIM TO POTENTIAL CLASS MEMBERS**

It is hereby ORDERED AND DECREED as follows:

1. The Motion for Preliminary Approval of Proposed Settlement Between Class Plaintiffs and Defendants, For Approval of and for Authorization to Disseminate Forms of Notice and Proof of Claim to Potential Class Members, is hereby GRANTED.

2. The Court finds that the proposed settlements with (1) Defendants The Morgan Crucible Company plc; Morganite Industries, Inc.; Morganite, Inc.; Morgan Advanced Materials and Technologies, Inc.; Morganite Electrical Carbon Ltd.; National Electrical Carbon Products, Inc. (collectively the "Morgan Defendants"); (2) Defendants Le Carbone Lorraine, S.A.; Carbone Lorraine North America Corporation and Carbone of America Industries Corporation (collectively the "Carbone Defendants"); (3) Defendants Ludwig Schunk Stiftung E.V.; Schunk GmbH; Schunk Kohlenstoff-Technik GmbH; Schunk of North America, Inc.; Schunk Graphite Technology LLC; Hoffmann and Co. Elektrokohle AG and Hoffmann Carbon, Inc. (collectively the "Schunk Defendants"); and (4) Defendant SGL Carbon, LLC (the "SGL Defendant") (the Morgan Defendants, Carbone Defendants, Schunk Defendants and the SGL Defendant are referred to collectively as "Settling Defendants"), as set forth in their respective Settlement Agreements, and subject to final determination following a hearing after notice to potential class members, is sufficiently fair, reasonable and adequate to authorize dissemination of notice of the proposed settlement to the Settlement Class (defined in paragraph 3 of this Order).

3. For purposes of disseminating notice of the proposed settlement with the Settling Defendants, and subject to final confirmation at the hearing on final approval of the proposed settlement contemplated by paragraph 16 of this Order, the Court preliminarily certifies the following settlement class (the "Settlement Class") pursuant to Fed. R. Civ. P. 23(a) and (b)(3):

All Persons (excluding federal government entities, Defendants and their respective parents, subsidiaries and affiliates) who purchased Electrical Carbon Products in the United States, or from a facility located in the United States, directly from Defendants, their affiliates, subsidiaries or alleged co-conspirators, during the period January 1, 1990, through December 31, 1999 (the "Class Period").

For purposes of this Order, "Electrical Carbon Products" means: (1) carbon brushes used in consumer products, including fractional horsepower brushes; (2) carbon brushes and current collectors (including pantographs but excluding brush holders and commutators) for automotive and traction-transit applications; (3) carbon brushes used in battery-operated vehicles; and (4) mechanical carbon products for use in pump and compressor industries. The term "traction-transit applications" includes railroad applications.

4. For purposes of disseminating notice of the proposed settlement with the Settling Defendants, and subject to final confirmation at the hearing on final approval of the proposed settlement contemplated by paragraph 16 of this Order, the Court preliminarily finds and concludes that:

a. The Settlement Class is so numerous that joinder of all members is impracticable, satisfying the requirement of Rule 23(a)(1);

b. There are questions of law or fact common to the Settlement Class, satisfying the requirements of Rule 23(a)(2);

c. The claims of the representative plaintiffs are typical of the claims of the Settlement Class, satisfying the requirement of Rule 23(a)(3);

d. The representative plaintiffs will fairly and adequately protect the interests of the Settlement Class, satisfying the requirements of Rule 23(a)(4);

e. Questions of law or fact common to the members of the Settlement Class predominate over questions affecting only individual members and a class action is superior to other methods available for the fair and efficient adjudication of the controversy, satisfying the requirements of Rule 23(b)(3); and

f. The action is manageable as a class action.

5. Pursuant to Fed.R.Civ.P. 23(g), the Court confirms the designation of the following attorneys as class counsel: Steven A. Asher, Esquire of Weinstein Kitchenoff & Asher LLC; Howard J. Sedran, Esquire of Levin, Fishbein, Sedran & Berman; Warren Rubin, Esquire of the Law Offices of Bernard M. Gross, P.C.; and Melissa H. Maxman, Esquire of Duane Morris, LLP (“Class Counsel”). The Court finds and concludes, pursuant to Fed. R. Civ. P. 23(g)(1)(B), that such counsel will fairly and adequately represent the interests of the Settlement Class, based upon the work counsel has done in identifying or investigating the claims in the action and counsel’s skill and diligence in arriving at the settlements with the Settling Defendants, counsel’s experience in handling class actions, other complex litigation, and claims of the type asserted in this action, counsel’s knowledge of the applicable law, and the resources counsel have committed and will commit to representing the Settlement Class.

6. The Notice, Summary Notice and Proof of Claim, attached hereto as Exhibits 1, 2 and 3, are approved and may be disseminated in substantially the same form. The Court finds that the mailing and publication of the Notices and Proof of Claim in the manner set forth in Paragraphs 8 and 9 below, constitute the best notice practicable under the circumstances as well as valid, due and sufficient notice to all persons entitled thereto and complies fully with the requirements of Federal Rule of Civil Procedure 23 and the due process requirements of the Constitution of the United States.

7. On or before **June 6, 2005**, the Settling Defendants shall provide to Class Counsel, in electronic, computer-readable format if available, the names and last known addresses of all persons and entities who purchased Electrical Carbon Products (as defined above) directly from any Settling Defendant or any subsidiary or affiliate of any Settling Defendant during the Class Period.

8. The Notice and Proof of Claim form shall be: (a) mailed by first class mail, postage prepaid, on or about **June 27, 2005** to all members of the Settlement Class identified by Settling Defendants pursuant to paragraph 7 hereof; and (b) provided to all persons who request it in response to the published Summary Notice provided for in Paragraph 9 herein.

9. Plaintiffs' counsel are hereby directed to cause a Summary Notice, in the form attached hereto as Exhibit 2, to be published, on or about **July 7, 2005**, on one occasion in the National Edition of The Wall Street Journal.

10. Plaintiffs' counsel shall retain Heffler, Radetich & Saita L.L.P., 1515 Market Street, Suite 1700, Philadelphia, PA 19102 as claims administrator ("Claims Administrator") for this settlement. The Claims Administrator shall post on a web site the Third Amended Consolidated Class Action Complaint filed in this litigation, the Settlement Agreements with the Settling Defendants, this Order, Notice, Summary Notice and Proof of Claim. The internet domain name shall be identified on the Notice and Summary Notice.

11. All requests for exclusion from the Settlement Class shall be postmarked no later than **August 22, 2005**, and shall otherwise comply with the requirements set forth in the Notices. Within three business days of receiving any request for exclusion, the Claims Administrator shall provide a copy of any such request to counsel for the Settling Defendants (as set forth in the Notice).

12. Plaintiffs' counsel shall file with the Court and serve on the parties by **September 29, 2005** (a) their petition for an award of attorneys' fees and reimbursement of litigation costs and expenses and (b) their motion for final approval of the Settlement Agreements with the Settling Defendants. Copies of the petition and the motion shall be posted on the web site identified in the Notice and Summary Notice.

13. Any member of the Settlement Class who wishes to object to (1) the proposed settlement of the litigation between the Settlement Class and the Settling Defendants, (2) the plan of allocation, (3) Class Counsel's request for an award of attorneys' fees and expenses, and (4) the requests for incentive awards for the named plaintiffs must do so in writing, postmarked no later than **October 24, 2005**, and shall otherwise comply with the requirements set forth in the Notices, including providing contemporaneous notice of any objection to all counsel identified in the Notice.

14. All Proof of Claim forms shall be postmarked no later than **October 24, 2005** and shall otherwise comply with the requirements set forth in the Notices.

15. Ten days before the date fixed by this Court for the Hearing (as defined in Paragraph 16 below), Plaintiffs' counsel shall cause to be filed with the Clerk of this Court, and served upon counsel for Settling Defendants, affidavits or declarations of the person under whose general direction the mailing of the Notice and Proof of Claim form and the publication of Summary Notice were made, showing that mailing and publication were made in accordance with this Order. The Claims Administrator shall maintain accurate records of the individual customers to which the Claims Administrator sent a Notice by First Class Mail, and accurate records of any mailed Notices that were returned to the Claims Administrator as undeliverable.

16. The Court will hold a hearing (the "Hearing") on **November 10, 2005 at 10:00 a.m.** at the Mitchell H. Cohen U.S. Courthouse, Fourth and Cooper Streets, Camden, N.J. 08101,

to determine the fairness, reasonableness, and adequacy of the proposed settlements with the Settling Defendants, and to determine (1) whether the proposed settlements are fair, reasonable and adequate and should be approved by the Court; (2) whether the plan of allocation should be approved; (3) whether Class Counsel's request for attorneys' fees and expenses should be approved and (4) whether the requests for incentive awards for the named plaintiffs should be approved, and a final judgment entered thereon. Any Class member who follows the procedure set forth in the Notices may appear and be heard at this hearing. The hearing may be continued without further notice to the Settlement Class.

17. The Court approves the establishment of the escrow account under the Settlement Agreements as a qualified settlement fund ("QSF") pursuant to Internal Revenue Code Section 468B and the Treasury Regulations promulgated thereunder, and retains continuing jurisdiction as to any issue that may arise in connection with the formation and/or administration of the QSF. Plaintiffs' counsel are, in accordance with the Settlement Agreements, authorized to expend funds from the QSF for payment of taxes and related expenses.

18. The Court approves the disbursement of up to \$100,000 from the settlement funds paid by the Settling Defendants to cover the costs of identifying and giving notice to the Settlement Class.

18. The litigation is stayed except as required by the Settlement Agreements in order to implement the same.

This \_\_\_\_ day of May, 2005

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JEROME B. SIMANDLE  
UNITED STATES DISTRICT COURT JUDGE

**EXHIBIT B**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

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<b>IN RE: ELECTRICAL CARBON PRODUCTS</b>	:	<b>MDL NO. 1514</b>
<b>ANTITRUST LITIGATION</b>	:	<b>MASTER CIVIL NO.</b>
	:	<b>03-2182 (JBS)</b>

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**SETTLEMENT AGREEMENT BETWEEN  
CLASS PLAINTIFFS AND DEFENDANTS THE MORGAN CRUCIBLE COMPANY  
PLC, MORGANITE INDUSTRIES, INC., MORGANITE, INC., MORGAN ADVANCED  
MATERIALS AND TECHNOLOGIES, INC., MORGANITE ELECTRICAL CARBON  
LTD. AND NATIONAL ELECTRICAL CARBON PRODUCTS, INC.**

This Settlement Agreement dated February 3, 2005 ("Settlement Agreement") is made and entered into by and among the Settling Parties: (a) the proposed class representative plaintiffs, on behalf of themselves and on behalf of the Class they seek to represent, by and through their respective counsel of record; and (b) defendants The Morgan Crucible Company PLC, Morganite Industries, Inc., Morganite, Inc., Morgan Advanced Materials and Technologies, Inc., Morganite Electrical Carbon Ltd. and National Electrical Carbon Products, Inc. (collectively the "Morgan Defendants"), by and through their respective counsel of record. Throughout this Settlement Agreement, any capitalized term not immediately defined is defined in accordance with Paragraphs 1 through 16 and 20.

WHEREAS, the class representative plaintiffs on behalf of themselves and the Class they seek to represent have alleged pursuant to the Litigation that the Morgan Defendants engaged in an unlawful worldwide conspiracy to fix, raise, maintain and stabilize the prices of Electrical Carbon Products in the United States and elsewhere; and

WHEREAS, the Morgan Defendants deny each and every allegation of wrongdoing and disclaim any and all wrongdoing or liability whatsoever, and have asserted a number of defenses to the claims asserted in the Litigation; and

WHEREAS, arms' length settlement negotiations have taken place between the Class Executive Committee and counsel for the Morgan Defendants, and this Settlement Agreement between Plaintiffs and the Morgan Defendants has been reached, subject to Final Approval of the Court; and

WHEREAS, the Class Executive Committee has concluded, after investigation of the facts and after considering the circumstances of the case and the applicable law, that it would be in the best interests of the Class to enter into this Settlement Agreement in order to avoid the uncertainties of litigation, and, further, consider the settlement set forth herein to be fair, reasonable and adequate; and

WHEREAS, the Morgan Defendants have concluded that they will enter into this Settlement Agreement solely to avoid the further expense, inconvenience and burden of this Litigation, and the distraction and diversion of their personnel and resources, and to put to rest this controversy with valued business customers, and to avoid the risks inherent in uncertain complex litigation;

IT IS THEREFORE STIPULATED AND AGREED, by and among the undersigned counsel, that the Litigation shall be compromised, resolved, discharged, settled and dismissed on the merits and with prejudice as to the Morgan Defendants, subject to approval of the Court pursuant to Rule 23(e) of the Federal Rules of Civil Procedure and subject to the following terms and conditions:

## DEFINITIONS

1. "Class Executive Committee" shall refer to Steven A. Asher of Fox Rothschild LLP; Melissa H. Maxman of Duane Morris LLP; Warren Rubin of Law Offices Bernard M. Gross; and Howard J. Sedran of Levin, Fishbein, Sedran and Berman.

2. "Class" or "Plaintiffs" means all Persons (excluding federal government entities, Defendants, and their respective parents, subsidiaries and affiliates) who purchased Electrical Carbon Products in the United States, or from a facility located in the United States, directly from Defendants, their affiliates, subsidiaries or co-conspirators, during the period January 1, 1990, through December 31, 1999.

3. "Class Member" means each member of the Class who does not timely and validly elect to opt-out or be excluded from the Class.

4. "Class Period" means the period from January 1, 1990 up to and including December 31, 1999.

5. "Defendant" or "Defendants" means any Person or Persons named as defendants in the Litigation.

6. "District Court" means the court of the Honorable Jerome B. Simandle of the United States District Court for the District of New Jersey, or such other judge sitting in his place and stead.

7. "Electrical Carbon Products" means: (1) carbon brushes used in consumer products, including fractional horsepower brushes; (2) carbon brushes and current collectors (including pantographs but excluding brush holders and commutators) for automotive and traction-transit applications; (3) carbon brushes used in battery-operated vehicles; and (4) mechanical carbon

products for use in pump and compressor industries. The term “traction-transit applications” in subparagraph (2), above, includes railroad applications.

8. “Final Approval” means, with respect to any Judgment of the District Court or any other Court, that such order represents a final and binding determination of all issues within its scope and is not subject to further review on appeal or otherwise. A judgment or other order becomes “Final” when: (a) if no appeal has been filed, the prescribed time for commencing an appeal has expired; or (b) if an appeal is filed, either (i) the appeal has been dismissed and the prescribed time, if any, for commencing any further appeal has expired, or (ii) the order has been affirmed in its entirety and the prescribed time, if any, for commencing any further appeal has expired.

9. “Judgment” means the order entered by the District Court in this Litigation pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, finally (a) approving certification of the Class pursuant to Rule 23 of the Federal Rules of Civil Procedure, solely for settlement purposes; (b) approving the settlement as fair, reasonable and adequate within the meaning of Rule 23; (c) dismissing the Litigation against the Morgan Defendants and individual defendants Ian P. Norris, Robin D. Emerson, F. Scott Brown and Jacobus Johan Anton Kroef without costs, with prejudice and on the merits; (d) approving the release of the Released Claims against the Releasees; and (e) reserving jurisdiction over the settlement, including all further proceedings concerning the administration, consummation and enforcement of the Settlement Agreement.

10. “Litigation” means the various actions consolidated by Order of the District Court dated June 25, 2003, and captioned collectively as In re Electrical Carbon Products Antitrust

Litigation, MDL No. 1514, Master Civil No. 03-2182 (JBS), pending in the United States District Court for the District of New Jersey.

11. "Notice" means a notice of settlement pursuant to this Settlement Agreement which shall include, in a form agreed upon by the Settling Parties and approved by the District Court in the Preliminary Approval Orders, the material terms of the settlement.

12. "Person" means any individual, corporation, partnership, association, affiliate, joint stock company, estate, trust, unincorporated association, entity, non-federal government and any political subdivision thereof, or any other type of business or legal entity.

13. "Preliminary Approval" means the order entered by the District Court (a) preliminarily approving certification of the Class pursuant to Rule 23 of the Federal Rules of Civil Procedure, solely for settlement purposes; (b) preliminarily approving this settlement between the Class and the Morgan Defendants in accordance with the terms and conditions of this Settlement Agreement; (c) approving the mailing of a Notice of the Settlement; (d) approving the publication of a summary Notice of the settlement; (e) setting a time during which Plaintiffs may serve written objections to the Settlement Agreement or any provision thereof; and (f) setting a hearing date to consider final approval of the Settlement Agreement.

14. "Releasees" shall refer jointly and severally, and individually and collectively, to the Morgan Defendants and all of their respective present and former parents, subsidiaries, divisions, affiliates, predecessors, successors and assigns and all of their respective present and former officers, directors, managers, employees, partners, limited partners, agents, attorneys, heirs, and their personal representatives, executors, administrators, transfers and assigns, including without limitation named

individual defendants Ian P. Norris, Robin D. Emerson, F. Scott Brown and Jacobus Johan Anton Kroef.

15. "Releasors" shall refer jointly and severally, and individually and collectively, to the Class Members.

16. "Settling Parties" means the Class Members and the Morgan Defendants.

#### **AUTHORIZATION AND BEST EFFORTS**

17. The undersigned counsel represent that they are fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement, and they agree to undertake their best efforts, including all steps and efforts contemplated by this Settlement Agreement, and any other steps and efforts which may become necessary by order of the District Court or otherwise, to effectuate this Settlement Agreement, including cooperating in seeking to secure within a reasonable time Preliminary Approval of this Settlement Agreement and, subsequently, Final Approval of this Settlement Agreement and the complete and final dismissal with prejudice of the Litigation as to the Morgan Defendants. To that end, the Settling Parties shall use their best efforts to obtain Court approval of the settlement.

#### **SETTLEMENT CLASS**

18. For purposes of settlement only, the undersigned agree that the claims asserted in the Litigation on behalf of the Class shall be certified as a class action pursuant to the requirements of Rule 23 of the Federal Rules of Civil Procedure.

19. Within twenty (20) business days after the execution of this Settlement Agreement, Plaintiffs shall submit to the District Court a motion, to be joined in or stipulated to by the Morgan

Defendants, requesting the Court to enter a Preliminary Approval Order, preliminarily certifying the Class pursuant to Rule 23 of the Federal Rules of Civil Procedure, solely for the purpose of settlement; authorizing dissemination of Notice to the Class; scheduling a hearing to consider final approval of this Settlement Agreement; and staying the Litigation against the Morgan Defendants, except as required by the terms of this Settlement Agreement.

**SETTLEMENT SUM AND GUARANTEE**

20. (a) The Morgan Defendants agree that they will pay or cause to be paid into an escrow account (“Escrow Account”) maintained by the Class Executive Committee at Wachovia Bank, Philadelphia, Pennsylvania, as escrow agent (“Escrow Agent”), the sum of \$15,000,000 (the “Settlement Sum”), according to the following schedule:

(i) The first installment of \$5,000,000 shall be made within five (5) business days after the date that Preliminary Approval of this Settlement Agreement is granted by the District Court, as defined in paragraph 13 hereof. This installment shall be held in the Escrow Account pending the Final Approval of the Settlement Agreement. On the same day that the first installment is made, the Morgan Defendants shall deliver to the Class Executive Committee a copy of a bank guarantee from a U.S. bank, or a U.S. branch of a foreign bank, that will secure the payment of the second and third installments.

(ii) The second installment, in the amount of \$5,000,000, shall be paid within five (5) business days of the Final Approval of this Settlement Agreement, as defined in paragraph 8 hereof.

(iii) The third installment, in the amount of \$5,000,000, shall be paid within 90 days of the Final Approval of this Settlement Agreement, as defined in paragraph 8 hereof.

(b) The Escrow Agent shall invest the Settlement Sum in instruments backed by the full faith and credit of the United States Government or any agency thereof and shall reinvest the proceeds of those instruments as they mature in similar instruments at their then-current market rates.

(c) The Settlement Sum and any income earned thereon shall hereinafter be referred to as the "Morgan Settlement Fund." The Morgan Defendants shall not be liable for any expenses, costs or attorneys' fees paid or incurred by or on behalf of the Plaintiffs' Executive Committee or any other counsel for any Plaintiff, but all such expenses, costs and attorneys' fees as approved by the District Court shall be paid out of the Morgan Settlement Fund upon Final Approval of the Settlement Agreement, provided, however, that following Preliminary Approval of this Settlement Agreement by the District Court, the costs of identifying and giving Notice to the members of the Class up to \$100,000, which sum may be deposited from the Escrow Account in an FDIC member bank, shall be paid from the Morgan Settlement Fund.

(d) To the extent that any Notice pursuant to this Settlement Agreement covers or otherwise includes any settlement with one or more other Defendants, Plaintiffs will apportion the expenses of Notice and administration among all of said settlements in proportion to the gross amounts of each.

(e) The Morgan Settlement Fund shall be deemed and considered to be *in custodia legis* of the District Court and shall remain subject to the jurisdiction of that Court until such time as the Fund shall be fully distributed pursuant to the terms approved by the Court.

## RELEASE TERMS

21. This Settlement Agreement shall have received Final Approval when the District Court enters a Judgment pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, which has become Final, discharging the Releasees of all further liability to the Releasers, dismissing the Litigation without costs on the merits and with prejudice as against the Releasees, and releasing and forever discharging the Releasees from all manner of claims, demands, actions, rights, suits, causes of action, of any kind whatsoever, known or unknown, suspected or unsuspected, fixed or contingent, accrued or not accrued, and whether or not concealed or hidden, in law or in equity, on behalf of the Releasers, arising under the Antitrust Laws of the United States or of any state or other jurisdiction, or under any similar statutory or common law, whether sounding in antitrust, unfair or deceptive trade practices or unfair competition, through the date on which this Settlement Agreement receives Final Approval, which have been, might have been, are now or could be asserted and which relate to or arise out of any alleged unlawful conspiracy to fix, raise, maintain or stabilize the prices of Electrical Carbon Products in the United States or that are in any way connected with any fact, circumstance, statement, event or matter of any kind that was raised or referred to or could have been raised or referred to in this Litigation. Nothing in this Settlement Agreement shall: (a) limit the right of any Plaintiff to submit a claim and participate in the Settlement or to exercise its right to exclude itself from the Class; (b) constitute a release of any commercial claim arising out of an alleged product defect or breach of contract relating to Electrical Carbon Products; or (c) limit the right of any Plaintiff to bring a claim with respect to his, her, or its indirect purchases of Electrical Carbon

Products. The claims covered pursuant to this Paragraph and those released pursuant to Paragraph 22 are referred to collectively as "Released Claims."

22. In addition to the provisions of Paragraph 21, upon this Settlement Agreement receiving Final Approval, each Class Member hereby expressly waives and releases any and all provisions, rights and benefits conferred by §1542 of the California Civil Code, which provides:

Section 1542. Certain Claims Not Affected by General Release. A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor;

or by any law of any state or territory of the United States, or principle of common law, which is similar, comparable or equivalent to §1542 of the California Civil Code. Each Class Member may hereafter discover facts in addition to, other than or different from those which he, she or it knows or believes to be true with respect to the claims that are the subject matter of the provisions of Paragraph 21, but each Class Member hereby expressly waives and fully, finally and forever settles and releases, upon this Settlement Agreement receiving Final Approval, any claim, whether known or unknown, suspected or unsuspected, contingent or non-contingent whether or not concealed or hidden, that now exists or heretofore have existed upon any theory of law or equity, which is the subject matter of Paragraph 21, without regard to the subsequent discovery or existence of such different or other facts. The Settling Parties acknowledge and/or shall be deemed to have acknowledged and by operation of the Judgment shall have acknowledged, that the foregoing waiver was separately bargained for and a key element of the Settlement of which this release is a part.

### **INVESTMENT AND USE OF THE SETTLEMENT FUNDS**

23. The payments set forth in Paragraph 20 shall be the only payments that any Morgan Defendant shall be required to make or cause to be made in connection with the Settlement Agreement. The Morgan Defendants shall have no responsibility for, no interest in or liability with respect to the investment of the Morgan Settlement Fund, the determination or calculation of any claim or payment from, or distribution of such Fund, the administration of such Fund, or any losses incurred in connection with such matters.

24. After this Settlement Agreement receives Final Approval, up to \$750,000 of the Morgan Settlement Fund may, upon application of the Class Executive Committee, be disbursed to pay costs and expenses incurred on behalf of the Plaintiffs by the Class Executive Committee or other counsel of Plaintiffs in connection with the prosecution of this Litigation, including costs and expenses incurred in connection with the administration and disbursement of the Morgan Settlement Fund. Disbursements for such costs and expenses shall be made from time to time with the approval of the Court.

### **QUALIFIED SETTLEMENT FUND**

25. The Morgan Settlement Fund is intended by the Settling Parties and the Escrow Agent to be treated as a "qualified settlement fund" for federal income tax purposes pursuant to Treas. Reg. § 1.468B-1 and to that end the Settling Parties hereto shall cooperate with each other and shall not take a position in any filing or before any tax authority that is inconsistent with such treatment. At the request of Settling Parties and the Escrow Agent, a "relation back election" as described in Treas.

Reg. § 1.468B-1(j) shall be made so as to enable the Morgan Settlement Fund to be treated as a qualified settlement fund from the earliest date possible, and the parties hereto shall take all actions as may be necessary or appropriate to this end. The Class Executive Committee, upon advice of its accountants or tax advisers, shall file all tax returns and pay from the Morgan Settlement Fund all taxes (including estimated taxes, interest or penalties) due with respect to the Fund. After Preliminary Approval and whether or not Final Approval has occurred, the Class Executive Committee shall pay all other related costs and expenses from the Morgan Settlement Fund. In all events, the Morgan Defendants shall have no responsibility or liability for the payment of any taxes or tax expenses in connection with the Morgan Settlement Fund. In the event federal or state income tax liability, including interest and penalties, is finally assessed against and paid by the Morgan Defendants as a result of any income earned on the Morgan Settlement Fund, the Morgan Defendants shall be entitled to reimbursement of such payment from the Fund, after approval by the Court. The Morgan Defendants will use their best efforts to resist any such assessment or payment. The Morgan Defendants shall have no responsibility or liability for the acts or omissions of the Escrow Agent.

#### **FINAL APPROVAL**

26. This Settlement Agreement shall not be Final and, except as provided in Paragraphs 20(c) and 24 hereof, no distribution from the Fund shall be made, until Final Approval of the Judgment entered by the District Court in conformance with Paragraph 9 has occurred. It is agreed that neither the provisions of Rule 60 of the Federal Rules of Civil Procedure, nor the All Writs Act, 28 U.S.C. §1651, shall be taken into account in determining the above dates. Appeals relating solely

to attorneys' fees, costs and/or the plan of distribution shall not delay the Final Approval of this Settlement Agreement.

### **INDIVIDUAL CUSTOMER SETTLEMENTS**

27. The Morgan Defendants have entered into agreements with some of their customers wherein such customers have released the Morgan defendants from all claims of the type asserted in this litigation. A list of those persons who have entered into such agreements with the Morgan Defendants is attached hereto as Exhibit A. Exhibit A shall be treated as "Highly Confidential" within the meaning of the Protective Order entered by the District Court on or about March 4, 2004. The persons listed on Exhibit A may not share in the Morgan Settlement Fund. Moreover, to the extent any persons listed on Exhibit A choose to opt out of this litigation, their sales shall not be included in the calculation of sales used to determine whether the Morgan Defendants, pursuant to Paragraph 29, may elect to terminate this agreement.

28. Nothing in the foregoing paragraph 27 shall preclude the persons listed on Exhibit A from submitting a claim against sums paid in settlement by defendants other than the Morgan Defendants.

### **TERMINATION**

29. Within ten (10) days after the Court-ordered deadline for submission of timely requests for exclusion from the Class, the Class Executive Committee shall provide to counsel for the Morgan Defendants a list of those Class Members, other than persons listed on Exhibit A (see

paragraph 27, supra), who have timely opted-out or excluded themselves from the Class. Within twenty (20) days after the actual receipt by the Morgan Defendants of the opt-out list from the Committee, counsel for the Morgan Defendants and the Class Executive Committee shall confer for the purpose of calculating the approximate aggregate dollar volume of purchases of those Class Members (other than those listed on Exhibit A) who have timely excluded themselves from the Class and to determine the approximate percentage that those purchases represent of all purchases of Electrical Carbon Products in the United States, exclusive of purchases made by customers listed on Exhibit A, made from the Morgan Defendants during the Class Period. If the Morgan Defendants reasonably determine that the requests for exclusions from the Class have been made by Class Members representing more than ten percent (10%) of the dollar amount of sales of Electrical Carbon Products from the Morgan Defendants in the United States, exclusive of sales made to customers listed on Exhibit A, this Settlement Agreement may be terminated at the option of the Morgan Defendants. Such option shall be exercised, if at all, within such period by service of written notice of the election to terminate this Settlement Agreement upon the Class Executive Committee, with a copy filed with the District Court. If the Class Executive Committee and counsel for the Morgan Defendants are unable to agree as to the percentage of purchases attributable to those Class Members who have timely excluded themselves from the Class, the matter shall be referred to the Court for decision, and the Court's decision shall be final, binding and unappealable.

### **CLASS LIST**

30. The Morgan Defendants will provide to the Class Executive Committee, subject to the Protective Order entered by the District Court on or about March 4, 2004, lists of the names and addresses of customers who purchased Electrical Carbon Products in the United States directly from it or directly from facilities located in the United States during the Class Period, to the extent that such lists are available. Such lists shall be provided by the Morgan Defendants in computer readable and mailing label formats, if available, on or before thirty (30) days prior to the date Notice to the Class is required pursuant to the Preliminary Approval Order of the District Court. The Class Executive Committee will send a Notice approved by the Court pursuant to Rule 23 of the Federal Rules of Civil Procedure, to the Class shown on such lists provided by the Morgan Defendants and all other Defendants.

### **MISCELLANEOUS PROVISIONS**

31. Any disputes between or among the Morgan Defendants and any Member or Members of the Class or the Class Executive Committee concerning matters contained in this Settlement Agreement shall, if they cannot be resolved by negotiation and agreement, be submitted to the District Court. The District Court shall retain jurisdiction over the implementation and enforcement of this Agreement.

32. If this Settlement Agreement is not approved by the District Court in substantially its present form, the Settlement Agreement does not obtain Final Approval, or the Settlement Agreement is terminated in accordance with its provisions or for any reason whatsoever, the Settling

Parties shall be restored to their respective positions as of the date of this Settlement Agreement, and all monies paid into the Settlement Fund shall be returned to the Morgan Defendants, except that Plaintiffs shall not be required to return that share of the costs of identifying and giving Notice to the members of the Class that was apportioned to the Morgan Defendants. The terms and provisions of this Settlement Agreement shall at that time have no further force and effect with respect to the Settling Parties and, to the extent permitted by law, shall not be used in any action or proceeding for any purpose and any judgment entered in accordance with the terms of the Settlement Agreement shall be treated as vacated, *nunc pro tunc*. The Morgan Defendants at that time (i) shall not be deemed to have waived any procedural or substantive defenses of any kind, including their right to challenge class certification on the merits, and (ii) shall be released from any and all obligations under the Settlement Agreement.

33. This Settlement Agreement may be executed in several counterparts, including pages sent by facsimile, all of which shall constitute one and the same instrument.

34. This Agreement of Settlement shall become effective, upon its execution by the undersigned counsel, as of February 3, 2005.

**FOR THE MORGAN DEFENDANTS:**

**SULLIVAN & CROMWELL**

**BY:**



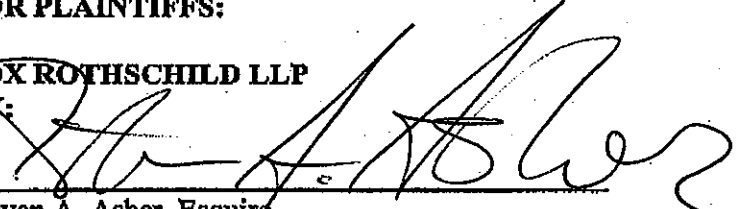
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**FOR PLAINTIFFS:**

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**DUANE MORRIS LLP**

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Telephone: 215-979-1173

**LAW OFFICES BERNARD M. GROSS, P.C.**

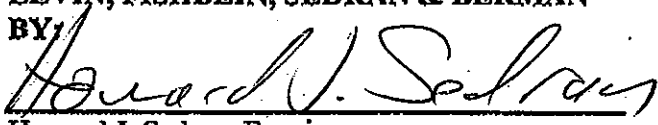
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**LEVIN, FISHBEIN, SEDRAN & BERMAN**

**BY:**



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Howard J. Sedran, Esquire  
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Telephone: 215-592-1500

**Class Plaintiffs' Executive Committee**

**FOR PLAINTIFFS:**

**FOX ROTHSCHILD LLP**

**BY:**

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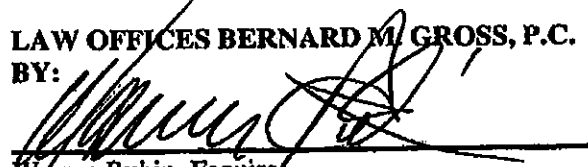
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**Class Plaintiffs' Executive Committee**

**EXHIBIT C**

Aug-11-04 16:58

From: KATTEN MUCHIN & ZAVIS

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

IN RE: ELECTRICAL CARBON PRODUCTS	:	MDL NO. 1514
ANTITRUST LITIGATION	:	MASTER CIVIL NO.
	:	03-2182 (JBS)

**SETTLEMENT AGREEMENT BETWEEN  
CLASS PLAINTIFFS AND DEFENDANTS LE CARBONE LORRAINE, S.A., CARBONE  
LORRAINE NORTH AMERICA CORPORATION AND CARBONE OF AMERICA  
INDUSTRIES CORPORATION**

This Settlement Agreement dated August 11, 2004 ("Settlement Agreement") is made and entered into by and among the Settling Parties: (a) the proposed class representative plaintiffs, on behalf of themselves and on behalf of the Class they seek to represent, by and through their respective counsel of record; and (b) Le Carbone Lorraine, S.A., Carbone Lorraine North America Corporation and Carbone of America Industries Corporation (collectively the "Carbone Defendants"), by and through their respective counsel of record. Throughout this Settlement Agreement, any capitalized term not immediately defined is defined in accordance with Paragraphs 1 through 16.

WHEREAS, the class representative plaintiffs on behalf of themselves and the Class they seek to represent have alleged pursuant to the Litigation that the Carbone Defendants engaged in an unlawful conspiracy to fix, raise, maintain and stabilize the prices of Electrical Carbon Products in the United States; and

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**WHEREAS, the Carbone Defendants deny each and every allegation of wrongdoing and disclaim any and all wrongdoing or liability whatsoever, and have asserted a number of defenses to the claims asserted in the Litigation; and**

**WHEREAS, arms' length settlement negotiations have taken place between the Class Executive Committee and counsel for the Carbone Defendants, and this Settlement Agreement between Plaintiffs and the Carbone Defendants has been reached, subject to Final Approval of the Court; and**

**WHEREAS, the Class Executive Committee has concluded, after investigation of the facts and after considering the circumstances of the case and the applicable law, that it would be in the best interests of the Class to enter into this Settlement Agreement in order to avoid the uncertainties of litigation, and, further, consider the settlement set forth herein to be fair, reasonable and adequate; and**

**WHEREAS, the Carbone Defendants have concluded that they will enter into this Settlement Agreement solely to avoid the further expense, inconvenience and burden of this Litigation, and the distraction and diversion of their personnel and resources, and to put to rest this controversy with valued business customers, and to avoid the risks inherent in uncertain complex litigation;**

**IT IS THEREFORE STIPULATED AND AGREED, by and among the undersigned counsel, that the Litigation shall be compromised, resolved, discharged, settled and dismissed on the merits and with prejudice as to the Carbone Defendants, subject to approval of the Court pursuant to Rule 23(e) of the Federal Rules of Civil Procedure and subject to the following terms and conditions:**

### **DEFINITIONS**

1. "Class Executive Committee" shall refer to Steven A. Asher of Fox Rothschild LLP; Melissa H. Maxman of Duane Morris LLP; Warren Rubin of Law Offices Bernard M. Gross; and Howard J. Sedran of Levin, Fishbein, Sedran and Berman.
2. "Class" or "Plaintiffs" means all Persons (excluding federal government entities, Defendants, and their respective parents, subsidiaries and affiliates) who purchased Electrical Carbon Products in the United States, or from a facility located in the United States, directly from Defendants, their affiliates, subsidiaries or co-conspirators, during the period January 1, 1990, through December 31, 1999.
3. "Class Member" means each member of the Class who does not timely and validly elect to opt-out or be excluded from the Class.
4. "Class Period" means the period from January 1, 1990 up to and including December 31, 1999.
5. "Defendant" or "Defendants" means any Person or Persons named as defendants in the Litigation.
6. "District Court" means the court of the Honorable Jerome B. Simandle of the United States District Court for the District of New Jersey, or such other judge sitting in his place and stead.
7. "Electrical Carbon Products" means: (1) carbon brushes used in consumer products, including fractional horsepower brushes; (2) carbon brushes and current collectors (including pantographs but excluding brush holders and commutators) for automotive and traction-transit

applications; (3) carbon brushes used in battery-operated vehicles; and (4) mechanical carbon products for use in pump and compressor industries.

8. "Final Approval" means, with respect to any Judgment of the District Court or any other Court, that such order represents a final and binding determination of all issues within its scope and is not subject to further review on appeal or otherwise. A Judgment or other order becomes "Final" when: (a) if no appeal has been filed, the prescribed time for commencing an appeal has expired; or (b) if an appeal is filed, either (i) the appeal has been dismissed and the prescribed time, if any, for commencing any further appeal has expired, or (ii) the order has been affirmed in its entirety and the prescribed time, if any, for commencing any further appeal has expired.

9. "Judgment" means the order entered by the District Court in this Litigation pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, finally (a) approving certification of the Class pursuant to Rule 23 of the Federal Rules of Civil Procedure, solely for settlement purposes; (b) approving the settlement as fair, reasonable and adequate within the meaning of Rule 23; (c) dismissing the Litigation against the Carbone Defendants without costs, with prejudice and on the merits; (d) approving the release of the Released Claims against the Releasees; and (e) reserving jurisdiction over the settlement, including all further proceedings concerning the administration, consummation and enforcement of the Settlement Agreement.

10. "Litigation" means the various actions consolidated by Order of the District Court dated June 25, 2003, and captioned collectively as In re Electrical Carbone Products Antitrust Litigation, MDL No. 1514, Master Civil No. 03-2182 (JBS), pending in the United States District Court for the District of New Jersey.

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11. "Notice" means a notice of settlement pursuant to this Settlement Agreement which shall include, in a form agreed upon by the Settling Parties and approved by the District Court in the Preliminary Approval Orders, the material terms of the settlement.

12. "Person" means any individual, corporation, partnership, association, affiliate, joint stock company, estate, trust, unincorporated association, entity, non-federal government and any political subdivision thereof, or any other type of business or legal entity.

13. "Preliminary Approval" means the order entered by the District Court (a) preliminarily approving certification of the class pursuant to Rule 23 of the Federal Rules of Civil Procedure, solely for settlement purposes; (b) preliminarily approving this settlement between the Class and the Carbone Defendants in accordance with the terms and conditions of this Settlement Agreement; (c) approving the mailing of a Notice of the Settlement; (d) approving the publication of a summary Notice of the settlement; (e) setting a time during which Plaintiffs may serve written objections to the Settlement Agreement or any provision thereof; and (f) setting a hearing date to consider final approval of the Settlement Agreement.

14. "Releasees" shall refer jointly and severally, and individually and collectively, to the Carbone Defendants and all of their respective present and former parents, subsidiaries, divisions, affiliates, predecessors, successors and assigns and all of their respective present and former officers, directors, managers, employees, partners, limited partners, agents, heirs, and their personal representatives, executors, administrators, transfers and assigns, subject to the provisions of paragraph no. 31(b). Notwithstanding the foregoing, "Releasees" does not include: (a) any person or entity other than a Releasee added or joined as a Defendant in the Litigation, including but not

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limited to the Morgan Crucible Company PLC, Morganite Industries, Inc., Morganite, Inc., Morgan Advanced Materials and Technologies, Inc., Morganite Electrical Carbon Ltd., National Electrical Carbon Products, Inc. (the preceding corporate defendants are hereafter referred to as the "Corporate Morganite Defendants"), Ludwig Schunk Stiftung F.V., Schunk GmbH, Schunk, Kohlenstoff-Technik GmbH, Schunk of North America, Inc., Schunk Graphite Technology LLC, Hoffmann and Co. Elektrokohle AG, Hoffmann Carbon, Inc., SOL, Carbon AG, SGL Carbon, LLC, Conradt Nuernberg GmbH, Ian P. Norris, Robin D. Emerson, F. Scott Brown and Jacobus Johan Anton Kroef; or (b) any co-conspirator of Defendants in this Litigation, other than the Releasees.

15. "Releasers" shall refer jointly and severally, and individually and collectively, to the Class Members.

16. "Settling Parties" means the Class Members and the Carbone Defendants.

#### **AUTHORIZATION AND BEST EFFORTS**

17. The undersigned counsel represent that they are fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement, and they agree to undertake their best efforts, including all steps and efforts contemplated by this Settlement Agreement, and any other steps and efforts which may become necessary by order of the District Court or otherwise, to effectuate this Settlement Agreement, including cooperating in seeking to secure within a reasonable time Preliminary Approval of this Settlement Agreement and, subsequently, Final Approval of this Settlement Agreement and the complete and final dismissal with prejudice of the Litigation as to the Carbone Defendants. To that end, the Settling Parties shall use their best efforts to obtain Court approval of the settlement.

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### SETTLEMENT CLASS

18 For purposes of settlement only, the undersigned agree that the claims asserted in the Litigation on behalf of the Class shall be certified as a class action pursuant to the requirements of Rule 23 of the Federal Rules of Civil Procedure.

19. Within ten (10) business days after the execution of this Settlement Agreement, Plaintiffs shall submit to the District Court a motion, to be joined in or stipulated to by the Carbone Defendants, requesting the Court to enter a Preliminary Approval Order, preliminarily certifying the Class pursuant to Rule 23 of the Federal Rules of Civil Procedure, solely for the purpose of settlement; authorizing dissemination of Notice to the Class; scheduling a hearing to consider final approval of this Settlement Agreement; and staying the Litigation against the Carbone Defendants, except as required by the terms of this Settlement Agreement.

### SETTLEMENT SUM AND GUARANTEE

20. (a) The Carbone Defendants agree that they will pay or cause to be paid into an escrow account ("Escrow Account") maintained by the Class Executive Committee at Wachovia Bank, Philadelphia, Pennsylvania, as escrow agent ("Escrow Agent"), the sum of \$6 million U.S. dollars (\$6,000,000) (the "Settlement Sum"), with accrued interest as set forth below, by funds wired or otherwise delivered, according to the following schedule:

- (i) The first installment of \$3 million U.S. dollars (\$3,000,000) shall be made within five (5) business days after the date that Preliminary Approval of this Settlement Agreement is granted by the District Court. This installment shall be held in the Escrow Account pending the Final Approval of the Settlement Agreement. On the same day that the first installment is made, Carbone Lorraine North America shall deliver to the Class Executive Committee a copy of a bank guarantee from a U.S. bank, or a U.S. branch of a foreign bank, that will secure the payment of the second installment.

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(ii) The second installment, in the amount of \$3 million U.S. dollars (\$3,000,000), plus accrued interest, shall be paid within five (5) business days of the Final Approval of this Settlement Agreement. Interest on the second installment shall accrue at a fixed annual rate of 2.5%, compounded daily, from the date on which the Preliminary Approval Order is entered by the District Court until the date on which the second installment is made. The Carbone Defendants shall present the Class Executive Committee with the form of guarantee, and disclose to said Committee the name of the guarantee bank, within ten (10) business days of the date on which this Settlement Agreement is executed.

(b) The Escrow Account shall be an interest-bearing account insured by the FDIC.

The Escrow Agent shall invest the Settlement Sum in instruments backed by the full faith and credit of the United States Government or any agency thereof and shall reinvest the proceeds of those instruments as they mature in similar instruments at their then-current market rates.

(c) The Settlement Sum and any income earned thereon shall hereinafter be referred to as the "Settlement Fund." The Carbone Defendants shall not be liable for any expenses, costs or attorneys' fees paid or incurred by or on behalf of the Plaintiffs Executive Committee or any other counsel of any Plaintiff, but all such expenses, costs and attorneys' fees as approved by the District Court shall be paid out of the Settlement Fund upon Final Approval of the Settlement Agreement, provided, however, that following Preliminary Approval of this Settlement Agreement by the District Court, the costs of identifying and giving Notice to the members of the Class up to \$100,000, which sum may be deposited from the Escrow Account in an FDIC member bank, shall be paid from the Settlement Fund.

(d) To the extent that any Notice pursuant to this Settlement Agreement covers or otherwise includes any settlement with one or more other Defendant, Plaintiffs will apportion the

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expenses of Notice and administration among all of said settlement(s) in proportion to the gross amounts of each.

(e) The Settlement Fund shall be deemed and considered to be *in custodia legis* of the District Court and shall remain subject to the jurisdiction of that Court until such time as the Fund shall be fully distributed pursuant to the terms approved by the Court.

#### RELEASE TERMS

21. This Settlement Agreement shall have received Final Approval when the District Court enters a Judgment pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, which has become Final, discharging the Releasees of all further liability to the Releasers, dismissing the Litigation without costs on the merits and with prejudice as against the Releasees, and releasing and forever discharging the Releasees from all manner of claims, demands, actions, rights, suits, causes of action, of any kind whatsoever, known or unknown, suspected or unsuspected, fixed or contingent, accrued or not accrued, and whether or not concealed or hidden, in law or in equity, on behalf of the Releasers, arising under the Antitrust Laws of the United States or of any state or other jurisdiction, or under any similar statutory or common law, whether sounding in antitrust, unfair or deceptive trade practices or unfair competition, through the date on which this Settlement Agreement receives Final Approval, which have been, might have been, are now or could be asserted and which relate to or arise out of any alleged unlawful conspiracy to fix, raise, maintain or stabilize the prices of Electrical Carbon Products in the United States or that are in any way connected with any fact, circumstance, statement, event or matter of any kind that was raised or referred to or could have been raised or referred to in this Litigation. Nothing in this Settlement Agreement shall: (a) limit the right

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of any Plaintiff to submit a claim and participate in the Settlement or to exercise its right to exclude itself from the Class; (b) constitute a release of any commercial claim arising out of an alleged product defect or breach of contract relating to Electrical Carbon Products, or (c) limit the right of any Plaintiff to bring a claim with respect to his, her, or its indirect purchases of Electrical Carbon Products. The claims covered pursuant to this Paragraph and those released pursuant to Paragraph 22 are referred to collectively as "Released Claims."

22. In addition to the provisions of Paragraph 21, upon this Settlement Agreement receiving Final Approval, each Class Member hereby expressly waives and releases any and all provisions, rights and benefits conferred by §1542 of the California Civil Code, which provides:

Section 1542. Certain Claims Not Affected by General Release. A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor;

or by any law of any state or territory of the United States, or principle of common law, which is similar, comparable or equivalent to §1542 of the California Civil Code. Each Class Member may hereafter discover facts in addition to, other than or different from those which he, she or it knows or believes to be true with respect to the claims that are the subject matter of the provisions of Paragraph 21, but each Class Member hereby expressly waives and fully, finally and forever settles and releases, upon this Settlement Agreement receiving Final Approval, any claim, whether known or unknown, suspected or unsuspected, contingent or non-contingent whether or not concealed or hidden, that now exists or heretofore have existed upon any theory of law or equity, which is the subject matter of Paragraph 21, without regard to the subsequent discovery or existence of such

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different or other facts. The Settling Parties acknowledge and/or shall be deemed to have acknowledged and by operation of the Judgment shall have acknowledged, that the foregoing waiver was separately bargained for and a key element of the Settlement of which this release is a part.

**INVESTMENT AND USE OF THE SETTLEMENT FUNDS**

23. The payments set forth in Paragraph 20 shall be the only payments that any Carbone Defendant shall be required to make or cause to be made in connection with the Settlement Agreement. The Carbone Defendants shall have no responsibility for, no interest in or liability with respect to the investment of the Settlement Fund, the determination or calculation of any claim or payment from, or distribution of such Fund, the administration of such Fund, or any losses incurred in connection with such matters.

24. After this Settlement Agreement receives Final Approval, up to \$750,000 of the Settlement Fund may, upon application of the Class Executive Committee, be disbursed to pay costs and expenses incurred on behalf of the Plaintiffs by the Class Executive Committee or other counsel of Plaintiffs in connection with the prosecution of this Litigation, including costs and expenses incurred in connection with the administration and disbursement of the Settlement Fund. Disbursements for such costs and expenses shall be made from time to time with the approval of the Court.

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**QUALIFIED SETTLEMENT FUND**

26. The Settlement Fund is intended by the Settling Parties and the Escrow Agent to be treated as a "qualified settlement fund" for federal income tax purposes pursuant to Treas. Reg. § 1.468B-1 and to that end the Settling Parties hereto shall cooperate with each other and shall not take a position in any filing or before any tax authority that is inconsistent with such treatment. At the request of Settling Parties and the Escrow Agent, a "relation back election" as described in Treas. Reg. § 1.468B-1(j) shall be made so as to enable the Settlement Fund to be treated as a qualified settlement fund from the earliest date possible, and the parties hereto shall take all actions as may be necessary or appropriate to this end. The Class Executive Committee, upon advice of its accountants or tax advisers, shall file all tax returns and pay from the Settlement Fund all taxes (including estimated taxes, interest or penalties) due with respect to the Fund. After Preliminary Approval and whether or not Final Approval has occurred, the Class Executive Committee shall pay all other related costs and expenses from the Settlement Fund. In all events, the Carbone Defendants shall have no responsibility or liability for the payment of any taxes or tax expenses in connection with the Settlement Fund. In the event federal or state income tax liability, including interest and penalties, is finally assessed against and paid by the Carbone Defendants as a result of any income earned on the Settlement Fund, the Carbone Defendants shall be entitled to reimbursement of such payment from the Fund, after approval by the. The Carbone Defendants will use their best efforts to resist any such assessment or payment. The Carbone Defendants shall have no responsibility or liability for the acts or omissions of the Escrow Agent.

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### **FINAL APPROVAL**

27. This Settlement Agreement shall not be final and, except as provided in Paragraph 20(c) hereof, no distribution from the Fund shall be made, until Final Approval of the Judgment entered by the District Court in conformance with Paragraph 9 has occurred. It is agreed that neither the provisions of Rule 60 of the Federal Rules of Civil Procedure, nor the All Writs Act, 28 U.S.C. §1651, shall be taken into account in determining the above dates. Appeals relating solely to attorneys' fees, costs and/or the plan of distribution shall not delay the Final Approval of this Settlement Agreement

### **TERMINATION**

28. Within ten (10) days after the Court-ordered deadline for submission of timely requests for exclusion from the Class, the Class Executive Committee shall provide to counsel for the Carbone Defendants a list of those Class Members who have timely opted-out or excluded themselves from the Class. Within twenty (20) days after the actual receipt by the Carbone Defendants of the opt-out list from the Committee, counsel for the Carbone Defendants and the Class Executive Committee shall confer for the purpose of calculating the approximate aggregate dollar volume of purchases of those Class Members who have timely excluded themselves from the Class and to determine the approximate percentage that those purchases represent of all purchases of Electrical Carbon Products in the United States made from Carbone Lorraine North America or any other Carbone Defendant during the Class Period. If the Carbone Defendants reasonably determine that the requests for exclusions from the Class have been made by Class Members representing more than twenty percent (20%) of the dollar amount of sales of Electrical Carbon Products from Carbone

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From-KATTEN MUCHIN &amp; ZAVIS

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Lorraine North America or any other Carbone Defendant in the United States, this Settlement Agreement may be terminated at the option of the Carbone Defendants. Such option shall be exercised, if at all, within such period by service of written notice of the election to terminate this Settlement Agreement upon the Class Executive Committee, with a copy filed with the District Court. If the Class Executive Committee and counsel for the Carbone Defendants are unable to agree as to the percentage of purchases attributable to those Class Members who have timely excluded themselves from the Class, the matter shall be referred to the Court for decision, and the Court's decision shall be final, binding and unappealable.

#### CLASS LIST

29. The Carbone Defendants will provide to the Class Executive Committee, subject to the Confidentiality Order entered by the District Court, lists of the names and addresses of customers who purchased Electrical Carbon Products in the United States directly from it or directly from facilities located in the United States during the Class Period, to the extent that such lists are available. Such lists shall be provided by the Carbone Defendants in computer readable and mailing label formats, if available, on or before thirty (30) days prior to the date Notice to the Class is required pursuant to the Preliminary Approval Order of the District Court. The Class Executive Committee will send a Notice approved by the Court pursuant to Rule 23 of the Federal Rules of Civil Procedure, to the Class shown on such lists provided by the Defendants.

#### MFN PROVISIONS

30. To the extent that Plaintiffs settle the Class claims asserted in the Litigation with the Corporate Morganite Defendants on terms that are proportionately less than the amount paid by the

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Carbone Defendants, based upon the total U.S. sales by the Corporate Morganite Defendants of Electrical Carbon Products during the class period, the Carbone Defendants will be entitled to a refund pursuant to the following formula:

(a) The settlement amount paid by the Carbone Defendants pursuant to this Settlement Agreement shall be divided by the total amount of Carbone Lorraine North America's U.S. sales of Electrical Carbon Products for the period January 1, 1990, to December 31, 1999, resulting in the "Carbone Payment Percentage."

(b) The settlement amount paid by the Corporate Morganite Defendants in any Class settlement shall be divided by the total amount of Morganite Inc.'s U.S. sales of Electrical Carbon Products for the period January 1, 1990, to December 31, 1999, resulting in the "Morganite Payment Percentage." In calculating the Morganite Payment Percentage, the sales to customers who entered into individual settlement agreements with any or all of the Corporate Morganite Defendants shall not be included.

(c) Should the Carbone Payment Percentage exceed the Morganite Payment Percentage, then the Carbone Defendants shall receive a refund of their settlement payment, not to exceed \$3 million, equal to the difference between what the Carbone Defendants actually paid and what they would have paid applying the Morganite Payment Percentage to Carbone Lorraine North America's U.S. sales of Electrical Carbon Products.<sup>1</sup>

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<sup>1</sup> For example, and purely by way of illustration, assume the Carbone Defendants paid \$2 million representing 20% of \$10 million in sales, and the Corporate Morganite Defendants paid \$2 million representing 10% of \$20 million in sales. The Carbone Payment Percentage would be 20% and the Morganite Payment Percentage would be 10%. If the Morganite Payment Percentage of 10% had been applied to the Carbone Defendants, payment would have been \$1 million instead of \$2 million for a difference of \$1 million.

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Notwithstanding the foregoing, the most favored nations provisions of this Paragraph shall expire upon the date ordered by the Court for completion of briefing on motions for summary judgment.

Additionally, the most favored nations provisions of this Paragraph shall not apply if it is demonstrated that, at the time of any possible settlement with the Corporate Morganite Defendants, the financial condition of all of the Corporate Morganite Defendants is sufficiently impaired so that a settlement on comparable terms is not feasible. Such financial impairment may be evidenced: (a) by filings by all of the Corporate Morganite Defendants under the U.S. Bankruptcy laws or comparable U.K. proceedings; or (b) by information sufficient to determine that all of the Corporate Morganite Defendants are insolvent. In the event Plaintiffs assert that the Corporate Morganite Defendants are impaired pursuant to this Paragraph, the Carbone Defendants, at their option, may require Plaintiffs to present evidence demonstrating such impairment. Any remaining dispute or disagreement regarding such impairment shall be presented to the District Court for decision and the Court's decision shall be final, binding and non-appealable.

#### **COOPERATION**

31. The Carbone Defendants shall provide reasonable cooperation to the Class Executive Committee in order to assist Plaintiffs in prosecuting this Litigation against the remaining Defendants. Such cooperation shall include the following:

(a) The Carbone Defendants shall make available to Plaintiffs documents in their possession, custody or control which are relevant to the claims asserted by Plaintiffs in this Litigation, including, but not limited to, documents and materials regarding Electrical Carbon

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From: KATTEN MUCHIN & ZAVIS

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Products provided to the Department of Justice with respect to its investigations of collusive activity in the Electrical Carbon Products industry.

(b) The Carbone Defendants will make their current employees with information relevant to the claims asserted by Plaintiffs, including information concerning meetings with competitors available for interview, deposition and trial. Any individual who is interviewed or deposed, while an employee of the Carbone Defendants will remain obligated to appear for trial in the United States. The release set forth in paragraphs nos. 14, 21 and 22, shall apply to each such person unless that person unreasonably refuses to appear for interview, deposition and trial as reasonably requested by Plaintiffs' counsel. In the event that an employee, or individual who was an employee at the time he was interviewed or deposed, unreasonably refuses to appear for trial in the United States, that individual's release may be voided by Plaintiffs. The Carbone Defendants shall pay the expenses for such persons to appear for interviews, depositions and trial, provided that the individual is an employee of the Carbone Defendants. If the individual is not a then-current employee, the reasonable travel expenses for such person to appear for interviews, depositions and trial will be paid by the Plaintiffs.

The Carbone Defendants will use their best efforts to make available for interview, deposition and trial in the United States former employees with information relevant to the claims asserted by Plaintiffs, including information concerning meetings with competitors. The release set forth in paragraph nos. 14, 21 and 22 shall apply to each such person unless such person unreasonably refuses to appear for an interview and deposition as reasonably requested by Plaintiffs' counsel. Plaintiffs will pay for the reasonable travel expenses for former employees.

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The failure of any current or former employee to comply with the terms of paragraph no. 31(b), or the invalidation of the release of any current or former employee, shall not affect in any way the release of the Carbone Defendants. By presenting such employees for depositions or trial, the Carbone Defendants will not and do not waive the Fifth Amendment rights of those employees, which rights belong to those employees individually.

(c) The Carbone Defendants agree to produce transactional data relating to Carbone Lorraine North America's sale of Electrical Carbon Products in the United States or from its facilities located in the United States in order to assist Plaintiffs in their calculation of damages. To the extent possible, the Carbone Defendants will produce such data in electronic form and will assist the Class Executive Committee in interpreting such data.

(d) The Carbone Defendants agree to provide written declarations pursuant to Federal Rules of Evidence 902(11) and (12) with respect to documents produced by the Carbone Defendants. In the event that such declarations are not sufficient to secure the admission of the documents, subject to the provisions of Paragraph 31(b), the Carbone Defendants agree to make available a witness for the purpose of testifying as to whether the documents produced in the Litigation are authentic, as well as whether they are true and correct copies of the originals and business records, and such other testimony as may be necessary to secure the admission of such documents.

32. The Settling Parties and their counsel agree that any information disclosed to them by the Carbone Defendants, formally or informally, shall be used solely for purposes of this Litigation

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and shall be treated as Highly Confidential under the Protective Order entered in this Litigation, unless designated otherwise.

### MISCELLANEOUS PROVISIONS

33. Except as specified in this paragraph, the fact of this settlement with Carbone shall not be construed to affect, in any manner whatsoever, any joint and several liability of any non-settling Defendants for the alleged conspiracy and other acts alleged in the Third Consolidated Amended Complaint in the above-captioned litigation, any putative common law rule or practice or State or local statute to the contrary notwithstanding. Plaintiffs and members of the Class, not timely excluded, shall not exclude from the dollar amount claimed against any other Defendant in the above-captioned litigation any damages based upon Carbone's sales of Electrical Carbon Products in the United States to such members during the Class Period except those sales, if any, that would be excluded by operation of applicable law.

34. Any disputes between or among the Carbone Defendants and any Member or Members of the Class or the Class Executive Committee concerning matters contained in this Settlement Agreement shall, if they cannot be resolved by negotiation and agreement, be submitted to the District Court. The District Court shall retain jurisdiction over the implementation and enforcement of this Agreement.

35. This Settlement Agreement may be executed in several counterparts, including pages sent by facsimile, all of which shall constitute one and the same instrument.

36. This Agreement of Settlement shall become effective, upon its execution by the undersigned counsel, as of August 11, 2004.

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From: KATTEN MUCHIN & ZAVIS

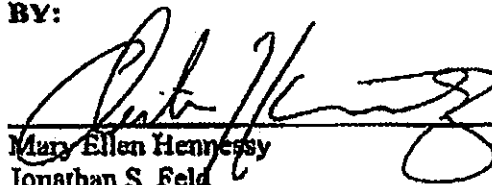
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**FOR DEFENDANTS LE CARBONE LORRAINE,  
S.A., CARBONE LORRAINE NORTH AMERICA  
CORPORATION AND CARBONE OF AMERICA  
INDUSTRIES CORPORATION:**

**KATTEN MUCHIN ZAVIS ROSENMAN**

**BY:**



Mary Ellen Hennessy

Jonathan S. Feld

Christian T. Kennitz

525 West Monroe Street, Suite 1600

Chicago, IL 60661

Telephone: 312-902-5200

**SCHNADER HARRISON SEGAL & LEWIS LLP**

**BY:**

Arlin M. Adams

Jennifer DeFault James

1600 Market Street, Suite 3600

Philadelphia, PA 19103

Telephone: 215-751-2000

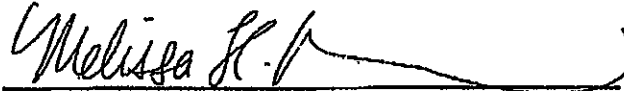
**FOR PLAINTIFFS METRO-NORTH COMMUTER RAILROAD COMPANY ("METRO-NORTH"); NEW YORK CITY TRANSIT AUTHORITY ("NYCTA"); LONG ISLAND RAIL ROAD ("LIRR"); SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY ("SEPTA"); and LOCKWOOD ELECTRIC MOTOR SERVICE OF TRENTON, NEW JERSEY ("LOCKWOOD"):**

**FOX ROTHSCHILD LLP  
BY:**

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Steven A. Asher, Esquire  
2000 Market Street, 10<sup>th</sup> Floor  
Philadelphia, PA 19103  
Telephone: 215-299-2725

**DUANE MORRIS LLP  
BY:**



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Melissa H. Maxman, Esquire  
One Liberty Place  
Philadelphia, PA 19103  
Telephone: 215-979-1173

**LAW OFFICES BERNARD M. GROSS, P.C.  
BY:**

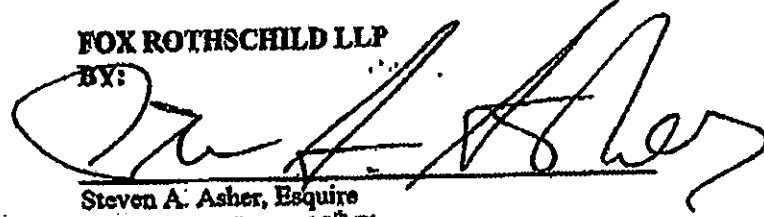
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Warren Rubin, Esquire  
1515 Locust Street, 2<sup>nd</sup> Floor  
Philadelphia, PA 19102  
Telephone: 215-561-3600

FOR PLAINTIFFS METRO-NORTH COMMUTER  
RAILROAD COMPANY ("METRO-NORTH"); NEW  
YORK CITY TRANSIT AUTHORITY ("NYCTA");  
LONG ISLAND RAIL ROAD ("LIRR");  
SOUTHEASTERN PENNSYLVANIA  
TRANSPORTATION AUTHORITY ("SEPTA"); and  
LOCKWOOD ELECTRIC MOTOR SERVICE OF  
TRENTON, NEW JERSEY ("LOCKWOOD"):

FOX ROTHSCHILD LLP

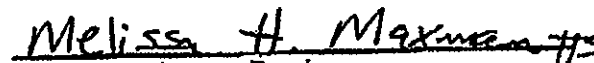
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LAW OFFICES BERNARD M. GROSS, P.C.

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BERNARD M GROSS, P. C.

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**FOR PLAINTIFFS METRO-NORTH COMMUTER  
RAILROAD COMPANY ("METRO-NORTH"); NEW  
YORK CITY TRANSIT AUTHORITY ("NYCTA");  
LONG ISLAND RAIL ROAD ("LIRR");  
SOUTHEASTERN PENNSYLVANIA  
TRANSPORTATION AUTHORITY ("SEPTA"); and  
LOCKWOOD ELECTRIC MOTOR SERVICE OF  
TRENTON, NEW JERSEY ("LOCKWOOD"):**

**FOX ROTHSCHILD LLP  
BY:**

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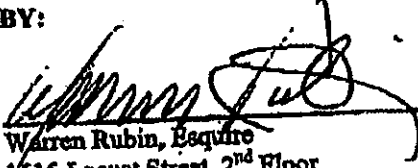
Steven A. Asher, Esquire  
2000 Market Street, 10<sup>th</sup> Floor  
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Telephone: 215-299-2725

**DUANE MORRIS LLP  
BY:**

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Philadelphia, PA 19102  
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From-KATTEN WUCHIN & ZAVIS

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T-534 P. 23/23 F-170

**LEVIN, FISHBEIN, SEDRAN & BERMAN  
BY:**



Howard J. Sedran, Esquire  
510 Walnut Street  
Philadelphia, PA 19106  
Telephone: 215-592-1500

**Class Plaintiffs' Executive Committee**

**EXHIBIT D**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

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<b>IN RE: ELECTRICAL CARBON PRODUCTS</b>	:	<b>MDL NO. 1514</b>
<b>ANTITRUST LITIGATION</b>	:	<b>MASTER CIVIL NO.</b>
	:	<b>03-2182 (JBS)</b>

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**SETTLEMENT AGREEMENT BETWEEN  
CLASS PLAINTIFFS AND DEFENDANTS LUDWIG SCHUNK STIFTUNG E.V.,  
SCHUNK GMBH, SCHUNK KOHLENSTOFF-TECHNIK GMBH, SCHUNK OF  
NORTH AMERICA, INC., SCHUNK GRAPHITE TECHNOLOGY LLC,  
HOFFMAN AND CO. ELEKTROKOHLE AG, AND HOFFMAN CARBON, INC.**

This Settlement Agreement dated December 17, 2004 (“Settlement Agreement”) is made and entered into by and among the Settling Parties: (a) the proposed class representative plaintiffs, on behalf of themselves and on behalf of the Class they seek to represent, by and through their respective counsel of record; and (b) Ludwig Schunk Stiftung e.V., Schunk GMBH, Schunk Kohlenstofftechnik GmbH, Schunk of North America, Inc., Schunk Graphite Technology LLC, Hoffman and Co. Elektrokohle AG, and Hoffman Carbon, Inc. (collectively the “Schunk Defendants”), by and through their respective counsel of record. Throughout this Settlement Agreement, any capitalized term not immediately defined is defined in accordance with Paragraphs 1 through 16.

WHEREAS, the class representative plaintiffs on behalf of themselves and the Class they seek to represent have alleged pursuant to the Litigation that the Schunk Defendants engaged in an unlawful conspiracy to fix, raise, maintain and stabilize the prices of Electrical Carbon Products in the United States; and

WHEREAS, the Schunk Defendants deny each and every allegation of wrongdoing and disclaim any and all wrongdoing or liability whatsoever, and have asserted a number of defenses to the claims asserted in the Litigation; and

WHEREAS, arms' length settlement negotiations have taken place between the Class Executive Committee and counsel for the Schunk Defendants, and this Settlement Agreement between Plaintiffs and the Schunk Defendants has been reached, subject to Final Approval of the Court; and

WHEREAS, the Class Executive Committee has concluded, after investigation of the facts and after considering the circumstances of the case and the applicable law, that it would be in the best interests of the Class to enter into this Settlement Agreement in order to avoid the uncertainties of litigation, and, further, consider the settlement set forth herein to be fair, reasonable and adequate; and

WHEREAS, the Schunk Defendants have concluded that they will enter into this Settlement Agreement solely to avoid the further expense, inconvenience and burden of this Litigation, and the distraction and diversion of their personnel and resources, and to put to rest this controversy with valued business customers, and to avoid the risks inherent in uncertain complex litigation;

IT IS THEREFORE STIPULATED AND AGREED, by and among the undersigned counsel, that the Litigation shall be compromised, resolved, discharged, settled and dismissed on the merits and with prejudice as to the Schunk Defendants, subject to approval of the Court pursuant to Rule 23(e) of the Federal Rules of Civil Procedure and subject to the following terms and conditions:

### **DEFINITIONS**

1. "Class Executive Committee" shall refer to Steven A. Asher of Fox Rothschild LLP; Melissa H. Maxman of Duane Morris LLP; Warren Rubin of Law Offices Bernard M. Gross; and Howard J. Sedran of Levin, Fishbein, Sedran and Berman.

2. "Class" or "Plaintiffs" means all Persons (excluding federal government entities, Defendants, and their respective parents, subsidiaries and affiliates) who purchased Electrical Carbon Products in the United States, or from a facility located in the United States, directly from Defendants, their affiliates, subsidiaries or co-conspirators, during the period January 1, 1990 through December 31, 1999.

3. "Class Member" means each member of the Class who does not timely and validly elect to opt-out or be excluded from the Class.

4. "Class Period" means the period from January 1, 1990 up to and including December 31, 1999.

5. "Defendant" or "Defendants" means any Person or Persons named as defendants in the Litigation.

6. "District Court" means the court of the Honorable Jerome B. Simandle of the United States District Court for the District of New Jersey, or such other judge sitting in his place and stead.

7. "Electrical Carbon Products" means: (1) carbon brushes used in consumer products, including fractional horsepower brushes; (2) carbon brushes and current collectors (including pantographs but excluding brush holders and commutators) for automotive and traction-transit

applications; (3) carbon brushes used in battery-operated vehicles; and (4) mechanical carbon products for use in pump and compressor industries.

8. "Final Approval" means, with respect to any Judgment of the District Court or any other Court, that such order represents a final and binding determination of all issues within its scope and is not subject to further review on appeal or otherwise. A Judgment or other order becomes "Final" when: (a) if no appeal has been filed, the prescribed time for commencing an appeal has expired; or (b) if an appeal is filed, either (i) the appeal has been dismissed and the prescribed time, if any, for commencing any further appeal has expired, or (ii) the order has been affirmed in its entirety and the prescribed time, if any, for commencing any further appeal has expired.

9. "Judgment" means the order entered by the District Court in this Litigation pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, finally (a) approving certification of the Class pursuant to Rule 23 of the Federal Rules of Civil Procedure, solely for settlement purposes; (b) approving the settlement as fair, reasonable and adequate within the meaning of Rule 23; (c) dismissing the Litigation against the Schunk Defendants without costs, with prejudice and on the merits; (d) approving the release of the Released Claims against the Releasees; and (e) reserving jurisdiction over the settlement, including all further proceedings concerning the administration, consummation and enforcement of the Settlement Agreement.

10. "Litigation" means the various actions consolidated by Order of the District Court dated June 25, 2003, and captioned collectively as In re Electrical Carbon Products Antitrust Litigation, MDL No. 1514, Master Civil No. 03-2182 (JBS), pending in the United States District Court for the District of New Jersey.

11. "Notice" means a notice of settlement pursuant to this Settlement Agreement which shall include, in a form agreed upon by the Settling Parties and approved by the District Court in the Preliminary Approval Orders, the material terms of the settlement.

12. "Person" means any individual, corporation, partnership, association, affiliate, joint stock company, estate, trust, unincorporated association, entity, non-federal government and any political subdivision thereof, or any other type of business or legal entity.

13. "Preliminary Approval" means the order entered by the District Court (a) preliminarily approving certification of the class pursuant to Rule 23 of the Federal Rules of Civil Procedure, solely for settlement purposes; (b) preliminarily approving this settlement between the Class and the Schunk Defendants in accordance with the terms and conditions of this Settlement Agreement; (c) approving the mailing of a Notice of the Settlement; (d) approving the publication of a summary Notice of the Settlement; (e) setting a time during which Plaintiffs may serve written objections to the Settlement Agreement or any provision thereof; and (f) setting a hearing date to consider final approval of the Settlement Agreement.

14. "Releasees" shall refer jointly and severally, and individually and collectively, to the Schunk Defendants and all of their respective present and former parents, subsidiaries, divisions, affiliates, predecessors, successors and assigns and all of their respective present and former officers, directors, managers, employees, partners, limited partners, agents, heirs, and their personal representatives, executors, administrators, transfers and assigns. Notwithstanding the foregoing, "Releasees" does not include: (a) the Morgan Crucible Company PLC, Morganite Industries, Inc., Morganite, Inc., Morgan Advanced Materials and Technologies, Inc., Morganite Electrical Carbon

Ltd., National Electrical Carbon Products, Inc. (the preceding corporate defendants are hereafter referred to as the "Corporate Morganite Defendants"), Le Carbone Lorraine, S.A., Carbone Lorraine North America Corporation, Carbone of America Industries Corporation, SGL Carbon AG, SGL Carbon, LLC, Conradty Nuernberg GmbH, Ian P. Norris, Robin D. Emerson, F. Scott Brown and Jacobus Johan Anton Kroef; or (b) any co-conspirator of Defendants in this Litigation, other than the Releasees.

15. "Releasers" shall refer jointly and severally, and individually and collectively, to the Class Members.

16. "Settling Parties" means the Class Members and the Schunk Defendants.

#### **AUTHORIZATION AND BEST EFFORTS**

17. The undersigned counsel represent that they are fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement, and they agree to undertake their best efforts, including all steps and efforts contemplated by this Settlement Agreement, and any other steps and efforts which may become necessary by order of the District Court or otherwise, to effectuate this Settlement Agreement, including cooperating in seeking to secure within a reasonable time Preliminary Approval of this Settlement Agreement and, subsequently, Final Approval of this Settlement Agreement and the complete and final dismissal with prejudice of the Litigation as to the Schunk Defendants. To that end, the Settling Parties shall use their best efforts to obtain Court approval of the settlement.

**SETTLEMENT CLASS**

18. For purposes of settlement only, the undersigned agree that the claims asserted in the Litigation on behalf of the Class shall be certified as a class action pursuant to the requirements of Rule 23 of the Federal Rules of Civil Procedure.

19. Within twenty (20) business days after the execution of this Settlement Agreement, Plaintiffs shall submit to the District Court a motion, to be joined in or stipulated to by the Schunk Defendants, requesting the Court to enter a Preliminary Approval Order, preliminarily certifying the Class pursuant to Rule 23 of the Federal Rules of Civil Procedure, solely for the purpose of settlement; authorizing dissemination of Notice to the class; scheduling a hearing to consider Final Approval of this Settlement Agreement; and staying the Litigation against the Schunk Defendants, except as required by the terms of this Settlement Agreement.

**SETTLEMENT SUM AND GUARANTEE**

20. (a) The Schunk Defendants agree that Schunk Kohlenstofftechnik GmbH and/or Hoffman and Co. Elektrokohle AG will pay or cause to be paid into an escrow account ("Escrow Account") maintained by the Class Executive Committee at Wachovia Bank, Philadelphia, Pennsylvania, as escrow agent ("Escrow Agent"), the sum of \$2.975 million U.S. dollars (\$2,975,000) (the "Settlement Sum"), within five (5) business days after the date that Preliminary Approval of this Settlement Agreement is granted by the District Court.

(b) The Escrow Account shall be an interest-bearing account insured by the FDIC. The Escrow Agent shall invest the Settlement Sum in instruments backed by the full faith and credit

of the United States Government or any agency thereof and shall reinvest the proceeds of those instruments as they mature in similar instruments at their then-current market rates.

(c) The Settlement Sum and any income earned thereon shall hereinafter be referred to as the "Settlement Fund." The Schunk Defendants shall not be liable for any expenses, costs or attorneys' fees paid or incurred by or on behalf of the Class Executive Committee or any other counsel of any Plaintiff, but all such expenses, costs and attorneys' fees as approved by the District Court shall be paid out of the Settlement Fund upon Final Approval of the Settlement Agreement, provided, however, that following Preliminary Approval of this Settlement Agreement by the District Court, the costs of identifying and giving Notice to the members of the Class up to \$100,000, which sum may be deposited from the Escrow Account in an FDIC member bank, shall be paid from the Settlement Fund.

(d) To the extent that any Notice pursuant to this Settlement Agreement covers or otherwise includes any settlement with one or more other Defendant, Plaintiffs will apportion the expenses of Notice and administration among all of said settlement(s) in proportion to the gross amounts of each.

(e) The Settlement Fund shall be deemed and considered to be *in custodia legis* of the District Court and shall remain subject to the jurisdiction of that Court until such time as the Fund shall be fully distributed pursuant to the terms approved by the Court.

#### **RELEASE TERMS**

21. This Settlement Agreement shall have received Final Approval when the District Court enters a Judgment pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, which has

become Final, discharging the Releasees of all further liability to the Releasors, dismissing the Litigation without costs on the merits and with prejudice as against the Releasees, and releasing and forever discharging the Releasees from all manner of claims, demands, actions, rights, suits, causes of action, of any kind whatsoever, known or unknown, suspected or unsuspected, fixed or contingent, accrued or not accrued, and whether or not concealed or hidden, in law or in equity, on behalf of the Releasors, arising under the Antitrust Laws of the United States or of any state or other jurisdiction, or under any similar statutory or common law, whether sounding in antitrust, unfair or deceptive trade practices or unfair competition, through the date on which this Settlement Agreement receives Final Approval, which have been, might have been, are now or could be asserted and which relate to or arise out of any alleged unlawful conspiracy to fix, raise, maintain or stabilize the prices of Electrical Carbon Products in the United States or that are in any way connected with any fact, circumstance, statement, event or matter of any kind that was raised or referred to or could have been raised or referred to in this Litigation. Nothing in this Settlement Agreement shall: (a) limit the right of any Plaintiff to submit a claim and participate in the Settlement or to exercise its right to exclude itself from the Class; (b) constitute a release of any commercial claim arising out of an alleged product defect or breach of contract relating to Electrical Carbon Products; or (c) limit the right of any Plaintiff to bring a claim with respect to his, her, or its indirect purchases of Electrical Carbon Products. The claims covered pursuant to this Paragraph and those released pursuant to Paragraph 22 are referred to collectively as "Released Claims."

22. In addition to the provisions of Paragraph 21, upon this Settlement Agreement receiving Final Approval, each Class Member hereby expressly waives and releases any and all provisions, rights and benefits conferred by §1542 of the California Civil Code, which provides:

Section 1542. Certain Claims Not Affected by General Release. A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor;

or by any law of any state or territory of the United States, or principle of common law, which is similar, comparable or equivalent to §1542 of the California Civil Code. Each Class Member may hereafter discover facts in addition to, other than or different from those which he, she or it knows or believes to be true with respect to the claims that are the subject matter of the provisions of Paragraph 21, but each Class Member hereby expressly waives and fully, finally and forever settles and releases, upon this Settlement Agreement receiving Final Approval, any claim, whether known or unknown, suspected or unsuspected, contingent or non-contingent whether or not concealed or hidden, that now exists or heretofore have existed upon any theory of law or equity, which is the subject matter of Paragraph 21, without regard to the subsequent discovery or existence of such different or other facts. The Settling Parties acknowledge and/or shall be deemed to have acknowledged and by operation of the Judgment shall have acknowledged, that the foregoing waiver was separately bargained for and a key element of the Settlement of which this release is a part.

#### **INVESTMENT AND USE OF THE SETTLEMENT FUNDS**

23. The payment set forth in Paragraph 20 shall be the only payment that any Schunk Defendant shall be required to make or cause to be made in connection with the Settlement

Agreement. The Schunk Defendants shall have no responsibility for, no interest in or liability with respect to the investment of the Settlement Fund, the determination or calculation of any claim or payment from, or distribution of such Fund, the administration of such Fund, or any losses incurred in connection with such matters.

24. After this Settlement Agreement receives Final Approval, up to \$500,000 of the Settlement Fund may, upon application of the Class Executive Committee, be disbursed to pay costs and expenses incurred on behalf of the Plaintiffs by the Class Executive Committee or other counsel of Plaintiffs in connection with the prosecution of this Litigation, including costs and expenses incurred in connection with the administration and disbursement of the Settlement Fund. Disbursements for such costs and expenses shall be made from time to time with the approval of the Court.

#### **QUALIFIED SETTLEMENT FUND**

25. The Settlement Fund is intended by the Settling Parties and the Escrow Agent to be treated as a "qualified settlement fund" for federal income tax purposes pursuant to Treas. Reg. § 1.468B-1 and to that end the Settling Parties hereto shall cooperate with each other and shall not take a position in any filing or before any tax authority that is inconsistent with such treatment. At the request of Settling Parties and the Escrow Agent, a "relation back election" as described in Treas. Reg. § 1.468B-1(j) shall be made so as to enable the Settlement Fund to be treated as a qualified settlement fund from the earliest date possible, and the parties hereto shall take all actions as may be necessary or appropriate to this end. The Class Executive Committee, upon advice of its accountants or tax advisers, shall file all tax returns and pay from the Settlement Fund all taxes (including

estimated taxes, interest or penalties) due with respect to the Fund. After Preliminary Approval and whether or not Final Approval has occurred, the Class Executive Committee shall pay all other related costs and expenses from the Settlement Fund. In all events, the Schunk Defendants shall have no responsibility or liability for the payment of any taxes or tax expenses in connection with the Settlement Fund. In the event federal or state income tax liability, including interest and penalties, is finally assessed against and paid by the Schunk Defendants as a result of any income earned on the Settlement Fund, the Schunk Defendants shall be entitled to reimbursement of such payment from the Fund, after approval by the District Court. The Schunk Defendants will use their best efforts to resist any such assessment or payment. The Schunk Defendants shall have no responsibility or liability for the acts or omissions of the Escrow Agent.

#### **FINAL APPROVAL**

26. This Settlement Agreement shall not be Final and, except as provided in Paragraph 20(c) hereof, no distribution from the Fund shall be made until Final Approval of the Judgment entered by the District Court in conformance with Paragraph 9 has occurred. It is agreed that neither the provisions of Rule 60 of the Federal Rules of Civil Procedure, nor the All Writs Act, 28 U.S.C. §1651, shall be taken into account in determining the above dates. Appeals relating solely to attorneys' fees, costs and/or the plan of distribution shall not delay the Final Approval of this Settlement Agreement.

#### **TERMINATION**

27. Within ten (10) days after the Court-ordered deadline for submission of timely requests for exclusion from the Class, the Class Executive Committee shall provide to counsel for

the Schunk Defendants a list of those Class Members who have timely opted-out or excluded themselves from the Class. Within twenty (20) days after the actual receipt by the Schunk Defendants of the opt-out list from the Committee, counsel for the Schunk Defendants and the Class Executive Committee shall confer for the purpose of calculating the approximate aggregate dollar volume of purchases of those Class Members who have timely excluded themselves from the Class and to determine the approximate percentage that those purchases represent of all purchases of Electrical Carbon Products in the United States made from Schunk Defendants during the Class Period. If the Schunk Defendants reasonably determine that the requests for exclusions from the Class have been made by Class Members representing more than twenty percent (20%) of the dollar amount of sales of Electrical Carbon Products from the Schunk Defendants in the United States, or from a Schunk Defendants' facility located in the United States, this Settlement Agreement may be terminated at the option of the Schunk Defendants. Such option shall be exercised, if at all, within such period by service of written notice of the election to terminate this Settlement Agreement upon the Class Executive Committee, with a copy filed with the District Court. If the Class Executive Committee and counsel for the Schunk Defendants are unable to agree as to the percentage of purchases attributable to those Class Members who have timely excluded themselves from the Class, the matter shall be referred to the Court for decision, and the Court's decision shall be final, binding and unappealable.

#### **CLASS LIST**

28. The Schunk Defendants will provide to the Class Executive Committee, subject to the Confidentiality Order entered by the District Court, lists of the names and addresses of customers

who purchased Electrical Carbon Products in the United States directly from it or directly from facilities located in the United States during the Class Period, to the extent that such lists are available. Such lists shall be provided by the Schunk Defendants in computer readable and mailing label formats, if available, on or before thirty (30) days prior to the date Notice to the Class is required pursuant to the Preliminary Approval Order of the District Court. The Class Executive Committee will send a Notice approved by the Court pursuant to Rule 23 of the Federal Rules of Civil Procedure, to the Class shown on such lists provided by the Schunk Defendants and all other Defendants.

#### **COOPERATION**

29. The Schunk Defendants shall provide reasonable cooperation to the Class Executive Committee in order to assist Plaintiffs in prosecuting this Litigation against the remaining Defendants. This cooperation shall proceed in two phases. The first phase shall commence after entry of the Preliminary Approval Order, at the point made necessary by the status of discovery directed toward other Defendants. The second phase shall commence promptly after entry of the Final Approval Order. The first phase shall consist of an oral proffer by counsel for Schunk to Plaintiffs' Executive Committee, which proffer shall take place at the offices of counsel for the Schunk Defendants. In this proffer, accompanied by a discussion of relevant documents, counsel for Schunk shall set forth the facts known to them which are relevant to the claims asserted by Class Plaintiffs in the Third Consolidated Amended Complaint. In the second phase, the Schunk Defendants shall provide plaintiffs with the full measure of cooperation set forth in Section 213(b) of

the Antitrust Criminal Penalty Enhancement and Reform Act of 2004 ("the Act") which will include the following:

(a) The Schunk Defendants shall make available to Plaintiffs documents in their possession, custody or control which are relevant to the claims asserted by Plaintiffs in this Litigation, including, but not limited to, documents and materials regarding Electrical Carbon Products provided to the Department of Justice with respect to its investigations of collusive activity in the Electrical Carbon Products industry.

(b) The Schunk Defendants will make their current employees with information relevant to the claims asserted by Plaintiffs, including information concerning meetings with competitors available for interview, deposition and trial. Any individual who is interviewed or deposed while an employee of the Schunk Defendants will remain obligated to appear for trial in the United States. The release set forth in paragraphs nos. 14, 21 and 22, shall apply to each such person unless that person unreasonably refuses to appear for interview, deposition and trial as reasonably requested by Plaintiffs' counsel. In the event that an employee, or individual who was an employee at the time he was interviewed or deposed, unreasonably refuses to appear for trial in the United States, that individual's release may be voided by Plaintiffs. The Schunk Defendants shall pay the expenses for such persons to appear for interviews, depositions and trial, provided that the individual is an employee of the Schunk Defendants. If the individual is not a then-current employee, the reasonable travel expenses for such person to appear for interviews, depositions and trial will be paid by the Plaintiffs.

The Schunk Defendants will use their best efforts to make available for interview, deposition and trial in the United States former employees with information relevant to the claims asserted by Plaintiffs, including information concerning meetings with competitors. The release set forth in paragraph nos. 14, 21 and 22 shall apply to each such person unless such person unreasonably refuses to appear for an interview and deposition as reasonably requested by Plaintiffs' counsel. Plaintiffs will pay for the reasonable travel expenses for former employees.

The failure of any current or former employee to comply with the terms of paragraph no. 29(b), or the invalidation of the release of any current or former employee, shall not affect in any way the release of the Schunk Defendants. By presenting such employees for depositions or trial, the Schunk Defendants will not and do not waive the Fifth Amendment rights of those employees, which rights belong to those employees individually.

(c) The Schunk Defendants agree to produce transactional data relating to Schunk North America's sale of Electrical Carbon Products in the United States or from its facilities located in the United States in order to assist Plaintiffs in their calculation of damages. To the extent possible, the Schunk Defendants will produce such data in electronic form and will assist the Class Executive Committee in interpreting such data.

(d) The Schunk Defendants agree to provide written declarations pursuant to Federal Rules of Evidence 902(11) and (12) with respect to documents produced by the Schunk Defendants. In the event that such declarations are not sufficient to secure the admission of the documents, subject to the provisions of Paragraph 29(b), the Schunk Defendants agree to make available a witness for the purpose of testifying as to whether the documents produced in the

Litigation are authentic, as well as whether they are true and correct copies of the originals and business records, and such other testimony as may be necessary to secure the admission of such documents.

30. The Settling Parties and their counsel agree that any information disclosed to them by the Schunk Defendants, formally or informally, shall be used solely for purposes of this Litigation and shall be treated as Highly Confidential under the Protective Order entered in this Litigation, unless designated otherwise.

#### MOST FAVORED NATIONS

31. In the event that the Carbone Defendants, as defined in the Carbone Settlement Agreement dated August 11, 2004 (a copy of which is attached hereto), are entitled to a refund pursuant to the Most Favored Nations provision set forth in paragraph 30 of the Carbone Settlement Agreement, then the Schunk Defendants shall also be entitled to a refund in the amount of 50% of the refund paid by Plaintiffs to the Carbone Defendants except that in no event shall the amount of refund paid by Plaintiffs to the Schunk Defendants exceed \$750,000.

#### MISCELLANEOUS PROVISIONS

32. If this Settlement Agreement is not approved by the District Court in substantially its present form, the Settlement Agreement does not obtain Final Approval, or the Settlement Agreement is terminated in accordance with its provisions or for any reason whatsoever, the Settling Parties shall be restored to their respective positions as of the date of this Settlement Agreement, and all monies, including interest, paid into the Settlement Fund shall be returned to the Schunk Defendants, except that Plaintiffs shall not be required to return that share of the costs of identifying

and giving Notice to the members of the Class that was apportioned to the Schunk Defendants. The terms and provisions of this Settlement Agreement shall at that time have no further force and effect with respect to the Settling Parties and, to the extent permitted by law, shall not be used in any action or proceeding for any purpose and any judgment entered in accordance with the terms of the Settlement Agreement shall be treated as vacated, nunc pro tunc. The Schunk Defendants at that time: (i) shall not be deemed to have waived any procedural or substantive defenses of any kind, including their right to challenge class certification on the merits, and (ii) shall be released from any and all obligations under the Settlement Agreement, including those cooperation obligations arising under Paragraph 29 of the Settlement Agreement. Notwithstanding the foregoing, at that time, any travel expenses already incurred pursuant to Paragraph 29 for which Plaintiffs would have been responsible under this Settlement Agreement shall be paid by Plaintiffs.

33. Except as specified in this paragraph, the fact of this settlement with Schunk shall not be construed to affect, in any manner whatsoever, any joint and several liability of any non-settling Defendants for the alleged conspiracy and other acts alleged in the Third Consolidated Amended Complaint in the above-captioned litigation, any putative common law rule or practice or State or local statute to the contrary notwithstanding. Plaintiffs and members of the Class, not timely excluded, shall not exclude from the dollar amount claimed against any other Defendant in the above-captioned litigation any damages based upon Schunk's sales of Electrical Carbon Products in the United States to such members during the Class Period except those sales, if any, that would be excluded by operation of applicable law.

34. Any disputes between or among the Schunk Defendants and any Member or Members of the Class or the Class Executive Committee concerning matters contained in this Settlement Agreement shall, if they cannot be resolved by negotiation and agreement, be submitted to the District Court. The District Court shall retain jurisdiction over the implementation and enforcement of this Agreement.

35. This Settlement Agreement may be executed in several counterparts, including pages sent by facsimile, all of which shall constitute one and the same instrument.

36. The recitals set forth in this Settlement Agreement are incorporated as though fully set forth herein.

37. This Agreement of Settlement shall become effective, upon its execution by the undersigned counsel, as of December 17, 2004.

**FOR DEFENDANTS :**

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**ARCHER & GREINER**

**BY:**

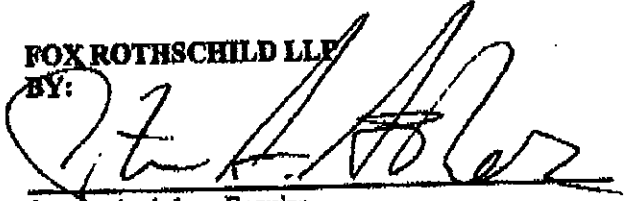
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**FOR PLAINTIFFS METRO-NORTH COMMUTER RAILROAD COMPANY ("METRO-NORTH"); NEW YORK CITY TRANSIT AUTHORITY ("NYCTA"); LONG ISLAND RAIL ROAD ("LIRR"); SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY ("SEPTA"); and LOCKWOOD ELECTRIC MOTOR SERVICE OF TRENTON, NEW JERSEY ("LOCKWOOD"):**

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**Class Plaintiffs' Executive Committee**