

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

**In re: ELECTRICAL CARBON
PRODUCTS ANTITRUST LITIGATION**

MDL No. 1514

**This Document Relates To: ALL
ACTIONS**

**Master Docket
No. 03-CV-2182 (JBS)**

**SUPPLEMENTAL MEMORANDUM OF LAW IN SUPPORT OF
MOTION FOR AWARD OF ATTORNEYS' FEES,
REIMBURSEMENT OF EXPENSES AND
INCENTIVE PAYMENTS TO THE CLASS REPRESENTATIVES**

This Memorandum is submitted in support of Plaintiffs' Motion for an Award of Attorneys' Fees, Reimbursement of Expenses and Incentive Payments to the Class Representatives. The Memorandum briefly discusses the events that transpired after the filing of Plaintiffs' Motion for an Award of Attorneys' Fees, Reimbursement of Expenses and Incentive Payments to the Class Representatives, dated September 29, 2005 ("Plaintiffs' Initial Fee Award Memorandum"), the reduced request for attorneys' fees and the modified request for incentive payments for certain of the plaintiffs. Plaintiffs' Initial Fee Award Memorandum is incorporated by reference.

On May 11, 2005, the Court granted preliminary approval of proposed settlements between Class plaintiffs and the Morgan defendants, the Carbone defendants, the Schunk defendants, and defendant SGL in the aggregate amount of \$24.2 million and directed that notice

of the settlements be disseminated by mail and publication to all potential Class Members of the Settlement Class.

Shortly before the final date for request from exclusion of the Settlement Class, August 22, 2005, thirteen entities gave timely notice of their wish to “opt-out”. Twelve of the opt-out Class Members were represented by the Washington, D.C. firm of Crowell & Moring. The dollar volume of purchases made by the plaintiffs represented by the Crowell & Moring firm was sufficiently large to permit the Morgan, Carbone and Schunk defendants to terminate their settlements with Class plaintiffs.

Upon notification of the opt-out filings by the Crowell & Moring clients, Class Counsel began an extensive round of discussions, meetings and negotiations to resolve the issues that arose as a result of these Class Members opting-out. The Crowell & Moring clients represented several hundred million dollars of purchases of Electrical Carbon Products and therefore triggered the walk-away rights under all of the settlement agreements, except under the Settlement Agreement with the SGL defendants.

With substantial assistance from the Court, an agreement was reached whereby the plaintiffs represented by the Crowell & Moring law firm were permitted to rejoin all of the settlements, with the exception of the settlement with the Carbone defendants. The Crowell & Moring plaintiffs elected not to participate in the Carbone settlement. As part of the Court-supervised negotiations, Class Counsel agreed that with respect to the Morgan, Schunk and SGL settlements, counsel would reduce their request for attorneys’ fees to 25% of those settlement funds, plus expenses. The request for attorneys’ fees and expenses from the Carbone settlement remains at 33⅓% of the Carbone settlement fund, including expenses. Accordingly, Class

Counsel have reduced their request for attorneys' fees in the amount of approximately \$1,869,000.¹ The requested expenses will be divided proportionately among the various settlement funds, as approved by the Court. Therefore, the present attorneys' fee request is \$5,700,003.10, plus interest and \$493,078.30 in litigation expenses.

As discussed above, since receiving notification that the plaintiffs represented by the Crowell & Moring law firm elected to opt-out of the class proceedings, Class Counsel and Liaison Counsel have spent considerable time trying to preserve the Class settlements. As a result of their persistent efforts, coupled with the substantial assistance provided by the Court, Class Counsel were able to work out a compromise that we believe is fair to all parties concerned. Class Counsel believed that the initial set of settlements were eminently fair given the various litigation risks. Class Counsel applied their best litigation and negotiating skills to achieve these settlements. However, to the surprise of Class Counsel, we had to begin a new set of negotiations to sustain the settlements after the Crowell & Moring plaintiffs filed their opt-out papers. Class Counsel hosted meetings of all parties and floated several and varied settlement proposals. Ultimately, one of these proposals proved acceptable to all parties and led to the overall resolution now before the Court. These additional efforts of Class Counsel, which were both persistent and creative, provide additional support for their fee and expense request.

Since submitting their papers in support of the request for attorneys' fees and expenses, Class Counsel and Liaison Counsel, Lisa R. Rodriguez, spent an additional \$206,887.75 in attorney and paralegal time and \$4,166.19 in expenses. Declarations of Counsel attesting to

¹ The Class notice referred to a fee reduction of approximately \$900,000. This sum represents the reduction applicable to the Morgan, Schunk and SGL settlements. The balance is attributable to the reduction in the amount now being paid by the Carbone defendants.

their supplemental time and expenses are attached hereto as Exhibits “A”-“E”. Most of this time was spent in meetings, discussions, negotiations and court conferences with respect to the Crowell & Moring opt-out issue. Additional time was spent in settlement administration, including issues related to the auditing of class member claims and in revising the Carbone settlement agreement and preparing the Supplemental Class Notice.

Despite all of this additional effort, plaintiffs’ counsel are requesting a reduced fee. As noted above, as part of the overall settlement discussions, Class Counsel agreed to limit their request for attorneys’ fees from all of the settlements, except the Carbone settlement, to 25% of the settlement amounts, plus proportional expenses. This information was included in the Supplemental Class Notice. The requested fee of \$5,700,003.10 represents a blended rate of about 26% of the total settlement funds. Moreover, the fee request is less than the lodestar and represents about 96% of the lodestar amount.

For all of the reasons set forth in Plaintiffs’ Initial Fee Award Memorandum and the facts set forth herein, the requested award of attorneys’ fees and expenses should be granted.

A. Request for the Reduced Incentive Awards Should Also Be Granted

In connection with Plaintiffs’ Initial Fee Award Memorandum, Class Counsel sought incentive awards in the amount of \$15,000.00 for plaintiffs, SEPTA, New York City Transit Authority, the Long Island Railroad, Metro North Commuter Railroad Company and Lockwood Electric Motor Service of Trenton. Additionally, an incentive award in the amount of \$7,500.00 was requested for plaintiff BART who also produced discovery in the case. In that initial request, Class Counsel omitted a request in the amount of \$7,500.00 for the City and County of San Francisco that participated in the case in the same manner as BART.

This supplemental request for incentive awards now seeks \$12,000.00 for plaintiffs SEPTA, New York City Transit Authority, the Long Island Railroad, Metro North Commuter Railroad Company and Lockwood Electric Motor Service of Trenton. \$6,000 is requested for BART and the City and County of San Francisco. The terms of this supplemental request was also set forth in the Supplemental Class Notice.

II. CONCLUSION

Based upon the foregoing and Plaintiffs' Initial Fee Award Memorandum and the accompanying exhibits, the request for an award of attorneys' fees, litigation expenses and incentive awards should be granted in all respects.

April 10, 2006

Respectfully submitted,

s/Lisa J. Rodriguez

Lisa J. Rodriguez, Esquire

TRUJILLO RODRIGUEZ & RICHARDS, LLC

8 Kings Highway East

Haddonfield, NJ 08033

CLASS CO-LIAISON COUNSEL

Warren Rubin, Esquire

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

Suite 450, John Wanamaker Building

Juniper and Market Streets

100 Penn Square East

Philadelphia, PA 19107

Sandra A. Jeskie, Esquire

DUANE MORRIS LLP

One Liberty Place, Suite 4200

Philadelphia, PA 19103

Howard J. Sedran, Esquire

Austin B. Cohen, Esquire

LEVIN, FISHBEIN, SEDRAN & BERMAN

510 Walnut Street, Suite 500

Philadelphia, PA 19106

Steven A. Asher, Esquire
WEINSTEIN KITCHENOFF & ASHER LLC
1845 Walnut Street, Suite 1100
Philadelphia, PA 19103

PLAINTIFFS' EXECUTIVE COMMITTEE