



### **III. THE PREVIOUS SETTLEMENTS**

Plaintiffs have previously entered into settlements with the EMTEC Defendants, the TDK Settling Defendants and BASF Corporation. The settlements with the TDK Settling Defendants and BASF Corporation were granted final approval by the Court on February 28, 2003.

The BASF Settlement Agreement required BASF Corporation to pay \$9 million for the benefit of the Class and \$400,000 for interim litigation expenses in exchange for the release of the claims of the Class against BASF Corporation.

The TDK Settlement Agreement required the TDK Settling Defendants to pay \$300,000 into an escrow account for the benefit of the Class, in exchange for the release of the claims of the Class against the TDK Settling Defendants.

EMTEC Magnetics GmbH and EMTEC Holding GmbH filed for bankruptcy protection under German law after the settlement was preliminarily approved. As a result of these filings and the EMTEC Defendants' failure to make their second installment payment, plaintiffs declared the EMTEC Settlement void. Under the EMTEC Settlement Agreement, plaintiffs will be able to keep the first payment (\$500,000.00) made by the EMTEC Defendants for the benefit of the Class. While the Class' claims against the EMTEC Defendants have not been released, because of the poor financial condition of the EMTEC Defendants, Class Counsel expect to dismiss the claims against EMTEC Defendants without prejudice and that no future recovery will be made from the EMTEC Defendants.

### **IV. THE OCOMP SETTLEMENT**

Class Co-Lead Counsel and counsel for the OCOMP Settling Defendants engaged in intensive discussions and arm's-length negotiations, which resulted in the proposed Settlement with the OCOMP Settling Defendants in the amount of \$450,000. Class Co-Lead Counsel concluded, after investigation of the facts and consideration of the applicable law, that the proposed OCOMP Settlement is in the best interest of the Class and avoids the uncertainties and delay inherent in the continued prosecution of this complex litigation against those defendants while securing their cooperation and a meaningful recovery for the Class. For their part, the OCOMP Settling Defendants, while asserting that they have no liability on the claims asserted by Plaintiffs and the Class and that they have various defenses, have agreed to the proposed settlement to avoid further expense, inconvenience, and the distraction of burdensome and protracted litigation.

The terms of the OCOMP Settlement, which will become effective only if finally approved by the Court, are set forth in detail in the Settlement Agreement dated April 21, 2003, which has been filed with the Court. The principal terms and conditions are summarized below.

#### **Release Provisions of the OCOMP Settlement Agreement**

If you are a member of the Class and the OCOMP Settlement is approved and becomes effective, you will be bound by its terms unless you previously submitted a timely and valid request for exclusion from the Class. As a Class member, you will be bound by the OCOMP Settlement Agreement, including its release provisions, whether or not you object to the settlement or submitted a claim seeking to share in settlement funds.

Class members are referred to the Settlement Agreement on file with the Court for the complete terms of the release, including the defined terms capitalized below. The summary contained in this Notice does not in any way modify or limit the terms of the release.

In accordance with paragraphs 6 and 17 of the OCOMP Settlement Agreement, if and when the OCOMP Settlement Agreement becomes final, the OCOMP Settling Defendants and their present and former parents, subsidiaries, divisions, affiliates, officers, directors, employees, agents and any of their legal representatives, including the "SK Group" as defined in the OCOMP Settlement Agreement (the "Released Parties"), shall be released and forever discharged from all manner of claims, demands, actions, suits, causes of action, whether class, individual, or otherwise in nature, damages whenever incurred, liabilities of any nature whatsoever, including costs, expenses, penalties and attorneys' fees, known or unknown, suspected or unsuspected, in law or equity, that any member or members of the Class who have not timely excluded themselves from the Class (including any of their past, present or future officers, directors, agents, employees, legal representatives, trustees, parents, associates, affiliates, subsidiaries, partners, heirs, executors, administrators, purchasers, predecessors, successors and assigns) and whether or not they object to the settlement and whether or not they make a claim upon or participate in the Settlement Fund, whether directly, representatively, derivatively or in any other capacity, ever had, now has or hereafter can, shall or may have relating in any way to any conduct prior to the date of the OCOMP Settlement Agreement, concerning the purchase, sale or pricing of Pancake Audiotape or related services or relating to any conduct alleged in the Complaints, and including, without limitations, claims which have been asserted or could have been asserted in any litigation against the Released Parties or any of them. In accordance with the terms of the OCOMP Settlement Agreement, the members of the Class settle with and release only the Released Parties as set forth therein; the parties do not intend the OCOMP Settlement Agreement, or any part thereof, or any other aspect of the proposed settlement or release, to release or otherwise affect in any way any rights the members of the Class have or may have against any other defendant in this litigation or against any other party or entity whatsoever other than the Released Parties as set forth therein. More particularly, the fact or terms of the OCOMP Settlement Agreement with the OCOMP Settling Defendants and the release contained therein shall not be construed to release or limit in any manner whatsoever the joint or several liability or damage responsibility of any other defendant or alleged co-conspirator (other than Released Parties) for the alleged conspiracy, sales or other acts alleged in these actions, including, but not limited to, any alleged damage or responsibility for any of the acts of or sales of Pancake Audiotape by the Released Parties. The release set forth in the OCOMP Settlement Agreement does not include claims by any of the Class Members based on the sale of defective products or a breach of contract or a breach of warranty unrelated to the conduct alleged in any of the complaints consolidated in 99-CV-1580.

In addition to the release provisions set forth in paragraph 16 of the OCMP Settlement Agreement, upon the OCMP Settlement Agreement becoming final, each member of the Class, will be deemed to have waived and released any and all provisions, rights and benefits conferred by § 1542 of the California Civil Code, which reads:

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 member of the Class may hereafter discover facts other than or different from those which he, she or it knows or believes to be true with respect to the claims which are the subject matter of the provisions of paragraph 16 of the OCMP Settlement Agreement, but each member of the Class waives and fully, finally and forever settles and releases, upon the OCMP Settlement Agreement becoming final, any known or unknown, suspected or unsuspected, contingent or non-contingent claim with respect to the subject matter of the provisions of paragraph 16 of the OCMP Settlement Agreement, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts.

#### **V. THE AUREX SETTLEMENT**

Class Co-Lead Counsel and counsel for the Aurex Settling Defendants also have engaged in intensive arm's-length negotiations that have resulted in a proposed settlement under which the Aurex Settling Defendants will be dismissed without prejudice. The dismissal will become effective 75 days from final approval of the Aurex Settlement. Because of the extremely poor financial condition of the Aurex Settling Defendants, they could not provide class-wide compensation in an amount that would merit their dismissal with prejudice and a release of the Class members' claims. Accordingly, Class plaintiffs entered into a settlement providing for the dismissal of the litigation with respect to dismissing the Aurex Settling Defendants without prejudice, thereby preserving individual Class members' claims. The settlement also requires the Aurex Settling Defendants to cooperate in plaintiff's prosecution of this litigation against the non-settling defendants by providing materials and information relevant to the allegations in plaintiffs' Complaints, and the right to interview and take testimony from certain individuals located outside the United States.

Class Co-Lead Counsel have concluded that the proposed settlement with the Aurex Settling Defendants is in the best interest of the Class and avoids the uncertainties and delay inherent in continued prosecution of this litigation against the Aurex Settling Defendants while securing their cooperation in the continued prosecution of the case.

#### **VI. DISTRIBUTION OF SETTLEMENT FUNDS**

The deadline for submitting proof of claim forms to share in settlement funds has passed following one extension by the Court. Class Counsel do not expect to distribute settlement funds for at least 6 months to allow for further prosecution of the claims against defendants Sunkyong Magnetic America, Inc. (SKMA) and SKM Ltd. If you previously submitted a claim form you need not take any further action, unless the Settlement Administrator requests further information.

#### **VII. SETTLEMENT HEARING**

Pursuant to an Order of the Court, a hearing (the "Settlement Hearing") will be held before the Honorable Lawrence M. McKenna, United States District Judge, at 10:00 am on August 8, 2003, in Courtroom 15D, United States Courthouse, 500 Pearl Street, New York, New York, for the purpose of determining whether the proposed OCMP and Aurex Settlements are fair, reasonable, and adequate and should be approved, and other related matters that may come before the Court. The time and date of the Settlement Hearing may be continued from time to time without further notice to the Class.

Members of the Class who do not wish to object to the proposed settlements need not appear at the Settlement Hearing. Any member of the Class who has not already timely and validly requested exclusion may appear at the hearing in person or by duly authorized attorneys and show cause why the settlements should not be approved as fair, reasonable and adequate. However, no Class member shall be heard in opposition to the proposed settlements and no paper or brief submitted by any Class member shall be received or considered by the Court unless, on or before July 21, 2003, such Class member files a notice of intention to appear and a statement of the position to be asserted and the grounds therefor, together with copies of any supporting papers or brief, referring to In re Magnetic Audiotape Antitrust Litigation No. 99-CV-1580 (LMM), with the Clerk of Court, United States District Court for the Southern District of New York, 500 Pearl Street, New York, NY 10007-1312. Copies of any such opposition or objection, and any supporting papers or brief also shall be sent by first-class mail, postage prepaid, postmarked no later than July 21, 2003, to the following counsel:

Howard J. Sedran, Esquire  
LEVIN, FISHBEIN, SEDRAN & BERMAN  
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Philadelphia, PA 19106  
Class Co-Lead Counsel

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Attorneys for Aurex Settling Defendants

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### PLEASE FORWARD—IMPORTANT LEGAL NOTICE

Max Gitter, Esquire  
CLEARY, GOTTLIEB, STEEN & HAMILTON  
One Liberty Plaza  
New York, NY 10006  
Attorneys for OCMP Settling Defendants

#### **VIII. FURTHER PROCEEDINGS**

Whether or not the proposed OCMP Settlement and Aurex Settlement are approved by the Court, this litigation will continue against the non-settling defendants: SKMA and SKM Ltd. The District Court previously dismissed SKM Ltd. on jurisdictional grounds and that dismissal has been appealed to the Second Circuit Court of Appeals.

#### **IX. ADDITIONAL INFORMATION**

This Notice contains a summary of the litigation, the proposed settlements, and related matters. For more detailed information, you or your attorney may examine the Settlement Agreements and other documents filed in the office of the Clerk of Court, United States District Court for the Southern District of New York, 500 Pearl Street, New York, New York, during regular business hours. If you have any questions with respect to this Notice or the litigation, you may direct them in writing to Class Co-Lead Counsel:

Howard J. Sedran, Esquire  
LEVIN, FISHBEIN, SEDRAN & BERMAN  
510 Walnut Street, Suite 500  
Philadelphia, PA 19106

The Settlement Agreements are also available at the following Internet address: [www.heffler.com](http://www.heffler.com)

**PLEASE DO NOT TELEPHONE OR ADDRESS INQUIRIES TO THE COURT.**

Dated: May 23, 2003

Clerk of Court  
United States District Court  
Southern District of New York