

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

In Re: LIQUID ALUMINUM SULFATE
ANTITRUST LITIGATION

Civil Action No. 16-md-2687 (MCA) (JAD)

**DECLARATION OF
JAMES E. CECCHI, ESQ.**

JAMES E. CECCHI, ESQ., of full age, hereby declares under penalty of perjury as follows:

1. I am an attorney licensed to practice in New Jersey and am a member of Carella, Byrne, Cecchi, Olstein, Brody & Agnello, P.C. (“Carella Byrne”). On April 8, 2016, I was appointed Interim Lead Counsel and Chair of the Plaintiffs’ Steering Committee (“PSC”). *See* DE No. 136 (amended at DE No. 139). Since that time, I have been responsible for the prosecution of this case on behalf of the Direct Purchaser Class Plaintiffs. As such, I am fully familiar with the facts contained herein.

2. On February 25, 2019, the Direct Purchaser Class Plaintiffs¹ (“DPPs”), individually and on behalf of the putative Direct Purchaser Settlement Class², finalized the terms

¹ The Direct Purchaser Class Plaintiffs are Central Arkansas Water; City of Charlotte, North Carolina; City and County of Denver, Colorado, acting by and through its board of Water Commissioners; Flambeau River Papers, LLC; City of Greensboro, North Carolina; Mobile Area Water and Sewer System; City of Rochester, Minnesota; City of Sacramento, California; SUEZ Water Environmental Services Inc.; SUEZ Water New Jersey Inc.; SUEZ Water Princeton Meadows Inc.; SUEZ Water New York Inc.; SUEZ Water Pennsylvania Inc.; City of Texarkana, Arkansas and City of Texarkana, Texas, d/b/a Texarkana Water Utilities, and City of Shreveport, Louisiana.

² The Court has provisionally certified the following settlement class (*i.e.*, the Direct Purchaser Settlement Class) solely for the purpose of effectuating the Settlement: all persons or entities that purchased liquid aluminum sulfate (“Alum”) in the United States directly from a Defendant from January 1, 1997 through February 28, 2011. Excluded from the Direct Purchaser Settlement Class are (1) Defendants and their respective parents, subsidiaries, and affiliates, and

of their agreement to resolve the above-captioned action (“Action” or “Consolidated Proceedings”) with Defendant USALCO LLC. On March 21, 2019, DPPs finalized a settlement with Defendant Southern Ionics Incorporated (“SII”). On March 21, 2019, DPPs signed a settlement agreement with Defendant American Securities LLC.

3. The Court preliminarily approved the USALCO and SII settlements on April 24, 2019 and the American Securities settlement on May 13, 2019. On June 7, 2019, the Court also directed notice of these settlements, set a schedule for opting out, of or objecting to, the settlements, and set final approval of the settlements..

4. The DPPs have now reached settlements with all Defendants. The final settlement, with C&S Chemicals, is awaiting preliminary approval from the Court. (Docket Entry 1326)

5. I submit this declaration in support of DPPs’ motion for final approval of the SII, USALCO, and American Securities settlements. I also submit this declaration, on behalf of Plaintiffs’ Counsel³, in support of Interim DPP Lead Counsel’s motion for an award of attorneys’ fees, reimbursement of litigation expenses, and payment of case contribution awards to the Direct Purchaser Class Plaintiffs.

6. I have personally participated in all material aspects of this Action, including negotiating the SII, USALCO and American Securities settlements.

(2) any Direct Purchaser Settlement Class Members who timely and validly elect to be excluded from the Direct Purchaser Settlement Class. *See* Docket Entries 1179, 1205.

³ Plaintiffs’ Counsel refers collectively to Interim DPP Lead Counsel and all plaintiffs’ firms that have assisted Interim DPP Lead Counsel in the prosecution of the Consolidated Proceedings.

7. I respectfully submit that: (i) the terms of the settlements are fair, reasonable, and adequate in all respects and should be granted final approval by the Court; and (ii) Interim DPP Lead Counsel's request for an award of attorneys' fees and expenses, including Case Contribution Awards to Direct Purchaser Class Plaintiffs, is reasonable and supported by the facts of this case, and should be granted in all respects.

SUMMARY OF THE ACTION AND THE SETTLEMENTS

Background and Procedural History of the Action

8. On October 31, 2015, Direct Purchaser Class Plaintiff Central Arkansas Water Authority filed the first action in this District alleging that Defendants conspired to allocate customers for liquid aluminum sulfate (*i.e.*, Alum). Alum is a commodity that is used primarily as a coagulant in municipal water treatment plants and for processing paper pulp. Since Alum is a commodity, the primary factor considered in purchasing Alum is price. In summary, Defendants are alleged to have agreed to submit non-competitive bids for selling Alum to historical customers of other Defendants. This filing followed the guilty plea of Frank A. Reichl on October 27, 2015 for his role in the conspiracy. Mr. Reichl was Vice President of Sales and Marketing for Non-Settling Defendant General Chemical Corporation ("GenChem").

9. Numerous other related suits were filed across the country, and on February 4, 2016, the Judicial Panel for Multidistrict Litigation transferred all related actions to this District. DE No. 1.

10. On February 17, 2016, Defendants Vincent Opalweski and Brian Steppig were indicted for their roles in the alleged conspiracy. Mr. Opalweski was also a Vice President of Sales and Marketing for GenChem, later serving as its Vice President and General Manager, then President. Mr. Steppig was Director of Sales and Marketing for GEO.

11. On June 16, 2016, GEO entered into a plea agreement with the Antitrust Division of the Department of Justice (“DOJ”) in which it admitted to participating in the conspiracy to allocate customers of Alum. As part of the plea agreement, GEO agreed to pay a \$5 million fine in installments over five years. This fine was agreed to by the DOJ and approved by the Court because that was the most GEO could afford to pay, given GEO’s financial circumstances and that GEO would also need to separately compensate its victims through this civil action. *See* Cr. No. 16-290, Tr. 21:9 to 25:9.

12. Plaintiffs filed the Consolidated Amended Complaint on August 22, 2016 (the “Complaint”) alleging that all Defendants participated in a conspiracy in the Alum market by not competing for each other’s historical business, and by allocating customers and fixing the price of Alum between January 1, 1997 and February 2011. DE No. 220, Compl., ¶¶1, 3. The Complaint further alleges that Defendants engaged in this conspiracy by, *inter alia*: (1) participating in secret communications, discussions, and meetings to exchange confidential and competitively sensitive information regarding each other’s Alum business; (2) agreeing to “stay away” from each other’s “historical” customers by not pursuing those customers; (3) tracking bid and pricing histories to identify the “historical” customers of each co-conspirator; (4) submitting intentionally losing or “throw away” bids to each other’s “historic” customers; (5) discussing and agreeing to set a price floor to be quoted to a customer by an intended winner to determine the amount of the intended loser’s intentionally losing or “throw away” bid; (6) where a co-conspirator could not withdraw its inadvertently winning bid, bidding to lose one of its own customers to compensate for the loss of that “historical” customer; (7) instructing new employees on determining whether and how to bid on Alum business so as to comport with the

agreement to not compete; and (8) selling Alum to customers at artificially inflated prices in the United States. *See e.g., id.* ¶135.

13. Many of the Defendants, including USALCO and SII, moved to dismiss the Complaint. The Court denied Defendants' motions to dismiss in their entirety. DE No. 405.

14. Since the denials of Defendants' motions to dismiss, the parties to the Consolidated Proceedings have been engaged in voluminous paper discovery, with Defendants having produced more than 13 million pages of documents. The DPPs also have the benefit of the information and documents provided as part of the criminal investigation as well as the guilty pleas acknowledging the conspiracy. As such, the procedural history reflects that DPPs have ample information to determine the sufficiency of the evidence supporting the alleged conspiracy.

B. The Settlements

15. The settlements before the Court now follow the Court's approval of DPPs' agreements with GEO, Kemira and Chemtrade. In assessing the propriety of these settlements, it is important to consider the relative market size of each Defendant. Indeed, in crafting the settlements, the DPPs intended for each settlement to be roughly proportional based upon market share.

16. The settlements are the product of arm's-length negotiations with the assistance of neutral mediators (Hon. Faith S. Hochberg and David Geronemus) and extensive negotiations between experienced and informed attorneys. DPPs engaged in an extensive fact investigation before entering into the settlements with SII, USALCO and American Securities, including, but not limited to, reviewing millions of pages of documents produced in the case. We also had the benefit of each of the preceding settlements.

17. Proportionate to settlements with other Defendants, each of these settlements is a strong result for the Direct Purchaser Settlement Class, and assures a meaningful monetary award while avoiding significant uncertainties, risks (*e.g.*, class certification and appellate risks), and extended delays of continuing to litigate this Action. The uncertainties are significant given that USALCO, SII and American Securities all deny that they engaged in any anticompetitive conduct, and the Settlement Agreements expressly state as such. Experienced counsel who asserted credible defenses also represented each defendant.

18. As is common in large class actions, the parties settled these cases using experienced mediators. The SII and USALCO settlements utilized retired District Court Judge Faith Hochberg. Judge Hochberg had extensive experience in facilitating settlements during her 15 years on the bench, and has used that experience in becoming a private arbitration/mediation neutral since her retirement from the bench.

19. The American Securities settlement was negotiated with the assistance of David Geronemus, a highly respected mediator affiliated with JAMS. Mr. Geronemus was a law clerk to Supreme Court Justice Potter Stewart, and has taught alternative dispute resolution at Yale and Columbia law schools.

20. Following the execution of the Settlement Agreements, the parties worked to finalize the related documents. During this time, Interim DPP Lead Counsel also worked with Angeion Group, LLC (“Angeion”), the firm retained by Interim DPP Lead Counsel – following a competitive bidding process – to supervise and administer the notice procedure in connection

with the settlement as well as the processing of claims,⁴ on the details of their proposed notice plan.

21. If approved by the Court, the settlements will resolve all claims arising out of, or relating in any way to, the facts and circumstances alleged in the Consolidated Proceedings against USALCO, SII and American Securities on behalf of all members of the Direct Purchaser Settlement Class (who do not request exclusion). *See* USALCO Settlement Agreement, ¶ 14; SII Settlement Agreement, ¶ 15; American Securities Settlement Agreement, ¶14.

22. Pursuant to the settlements, neither USALCO, SII nor American Securities have any right of reversion, and thus members of the Direct Purchaser Settlement Class will receive the full benefit of the Net Settlement Fund (*i.e.*, the Settlement Funds (defined below) after payment of any taxes, administration expenses, and Court-approved attorneys' fees, expenses and Case Contribution Awards). The Net Settlement Fund will be distributed to eligible Direct Purchaser Settlement Class Members after the Court grants final approval to the Settlements, all claims have been fully processed by the Settlement Administrator and the Court has authorized distribution of the Net Settlement Fund.

ii. The Settlement Terms

1. The Monetary Recovery

23. Each of the settlements are all cash, again, roughly proportional to each defendant's share of the market. SII has agreed to pay \$6.5 million in cash. USALCO has agreed to pay \$6.1 million, payable in three installments, \$3 million within 60 days after preliminary

⁴ Angeion was subsequently appointed by the Court as Settlement Administrator pursuant to its Order dated July 19, 2018. DE No. 985, ¶6.

approval of the settlement, \$2 million one year after the first payment, and \$1.1 million two years after the first payment. American Securities has agreed to pay \$13 million in cash.

COMPLIANCE WITH THE COURT-APPROVED NOTICE PLAN

24. Pursuant to its preliminary approval orders, the Court appointed Angeion as the Settlement Administrator for the settlements and instructed Angeion to, among other things: (i) disseminate copies of the Notice and Claim Form by mail to all Direct Purchaser Settlement Class Members readily and reasonably identified by or previously identified by settling defendants, identified by or previously identified by previously settling defendants, or identified by Interim DPP Lead Counsel; and (ii) publish the Summary Notice as soon as practicable after the mailing date. Docket Entry 1313, ¶1. Working in conjunction with Interim DPP Lead Counsel, Angeion completed these tasks in accordance with the Court's Order. *See generally* Declaration of Andy Morrison dated August 28, 2019. ("Morrison Declaration").

25. The Notice contains important information concerning the Action and the settlements, including the definition of the Direct Purchaser Settlement Class, a description of the settlements and information regarding the claims asserted in the Action. The Notice also provides information for Direct Purchaser Settlement Class Members to determine whether to (i) participate in the settlements and be eligible for a payment from the Net Settlement Fund by submitting a claim, (ii) object to the settlements, Plan of Distribution, and/or Interim DPP Lead Counsel's motion for attorneys' fees and expenses, including Case Contribution Awards to Direct Purchaser Class Plaintiffs, or (iii) request exclusion from the Direct Purchaser Settlement Class, as well as instructions for effectuating any of the foregoing. The Notice also informs recipients of Interim DPP Lead Counsel's intention to apply for attorneys' fees up to 33.3% of the total consideration made available to the Direct Purchaser Settlement Class, payment of the

costs and expenses advanced on behalf of the Direct Purchaser Settlement Class, and Case Contribution Awards of no more than \$40,000 for each of the Direct Purchaser Class Plaintiffs for each settlement who served as proposed class representatives while the case was pending.

26. Angeion has disseminated a total of 10,043 copies of the Notice and Claim Form to potential Direct Purchaser Settlement Class Members by First-Class Mail. *See Morrison Dec.*, ¶10. Angeion also caused the Summary Notice to be published in the August 2019 edition of *The Municipal*, which had a hard copy distribution date of July 18, 2019. *Id.*, ¶ 12.

27. Interim DPP Lead Counsel also worked with Angeion to establish a website dedicated to the Settlements, www.LiquidAluminumDirectSettlement.com. The website provides Direct Purchaser Settlement Class Members with information concerning the settlements and the important dates and deadlines in connection therewith, as well as access to downloadable copies of the Notice and Claim Form and other settlement documents. *Morrison Dec.*, ¶¶ 13-16.⁵ The website also provides Direct Purchaser Settlement Class Members the ability to submit a claim online. Additionally, Angeion maintains a settlement-specific toll-free telephone number to respond to inquiries regarding the settlements. *Id.*, ¶¶ 17-18. Direct Purchaser Settlement Class Members also can contact Angeion by e-mail at info@LiquidAluminumDirectSettlement.com.

28. The Court-ordered deadline for Direct Purchaser Settlement Class Members to request exclusion from the settlements was July 26, 2019 and the deadline to file objections to the settlements, Plan of Distribution, and/or Interim DPP Lead Counsel's motion for attorneys' fees and expenses, including Case Contribution Awards to Direct Purchaser Class Plaintiffs, is September 12, 2019. To date, there have been no objections of any kind, and only three Direct

⁵ Once filed, Interim DPP Lead Counsel will also cause this declaration, along with its complete submission in support of final approval of the settlements and motion for attorneys' fees and expenses, to be posted on the website.

Purchaser Settlement Class Members other than the Direct Action Plaintiffs requested exclusion. Morrison Dec., ¶ 19 If any objections or requests for exclusion are received after the date of this submission, Interim DPP Lead Counsel will address them in its reply papers to be filed with the Court on or before September 19, 2019.

ATTORNEY'S FEES AND EXPENSES

A. Plaintiffs' Counsel's Diligent Efforts and Out-of-Pocket Expenses

29. Interim DPP Lead Counsel, along with the other Plaintiffs' Counsel firms, vigorously prosecuted this Action against SII, USALSO, and American Securities for more than three years. This was a highly complex undertaking and not surprisingly, we have devoted substantial time and advanced substantial funds in order to prosecute these cases. Plaintiffs' counsel have been reimbursed for our out-of-pocket expenses incurred up to February 28, 2019 in connection with the GEO, Chemtrade and Kemira settlements.

30. As detailed above, Plaintiffs' Counsel diligently and skillfully prosecuted the Action against the Defendants, including SII, USALCO, and American Securities, in the face of formidable opposition. Our efforts included, *inter alia*: (i) conducting a thorough investigation into the Direct Purchaser Settlement Class's claims; (ii) drafting a detailed amended complaint; (iii) successfully opposing Defendants' motions to dismiss; (iv) participating in GEO's bankruptcy proceedings and consulting with bankruptcy experts in connection therewith; (v) engaging in extensive fact discovery, including the review of over 13 million pages of documents produced by Defendants; and (vi) reviewing information and documents provided as part of the criminal investigation as well as the guilty pleas acknowledging the conspiracy. Plaintiffs' Counsel, primarily through Interim DPP Lead Counsel, also engaged in protracted

settlement negotiations with SII, USALCO and American Securities, including numerous in-person meetings, formal mediation and telephone negotiations.

31. Moreover, in the context of its efforts regarding SII, USALCO and American Securities, Interim DPP Lead Counsel will continue to perform legal work on behalf of the Direct Purchaser Settlement Class through the final settlement hearing and beyond. Additional resources will be expended assisting Direct Purchaser Settlement Class Members with their claims, if requested, and related inquiries and working with Angeion to ensure the smooth progression of claims processing and distribution of the Net Settlement Fund. This holds true regarding all of the other settlements as well.

32. Plaintiffs' Counsel are comprised of some of the preeminent plaintiffs' class action and antitrust litigation firms in the country, with decades of experiences prosecuting such complex actions. Plaintiffs' Counsel applied this knowledge and experience to obtain a favorable result for the Direct Purchaser Settlement Class from USALCO, SII and American Securities, taking into consideration the risks of further litigation against these Defendants.

33. Plaintiffs' Counsel's efforts against the Defendants to date have required a substantial investment of time. Plaintiffs' Counsel have necessarily expended thousands of hours over more than three years of litigation, including negotiating the Settlements with USALCO, SII and American Securities. As detailed below, the substantial amount of time (and resulting lodestar) devoted to this Action clearly supports Interim DPP Lead Counsel's fee request of 33.3% of the Settlement Funds received.

B. Plaintiffs' Counsel's Lodestar

i. Interim DPP Lead Counsel's Time

34. As was set forth in my Declaration dated March 22, 2019 which was submitted in support of the Kemira and Chemtrade settlements (DE 1247-2), Direct Purchaser Class Plaintiffs' Counsel had together put in a total of 51,764.15 hours, resulting in a lodestar of \$30,392,817.40 as of February 28, 2019. In addition, Plaintiffs' counsel had incurred a total of \$1,429,450.19 in unreimbursed expenses. (These were in addition to \$2,109,260.17 in expenses that were reimbursed out of the GEO settlement.)

35. Since that time, Direct Purchaser Class Counsel's time has been primarily devoted to negotiating, finalizing and seeking approval for the settlements with USALCO, SII, American Securities, and C&S Chemicals. That work has amounted to a total of \$482,602.25 in lodestar, and additional expenses totaling \$19,548.31.

36. In connection with the Kemira and Chemtrade Settlements, Direct Purchaser Class Counsel was awarded a total of 33.33% of the then-paid amount of the settlements \$54.8 million, or \$18,266,666.67 and \$1,420,540.19 in expenses. (DE 1281) Direct Purchaser Class Counsel had previously been awarded 33.33% of the cash portion of the GEO settlement (\$10,796,800) or a total of \$3,598,933.33, payable from the last two payments from GEO which are due in January 2020 and January 2021. (DE 1171).

37. The total amount of the SII, USALCO, and American Securities settlements is \$25.7 million. Direct Purchaser Class Counsel is seeking 33.33% of that amount or \$8,566,666.67, with the fee earned from the USALCO settlement paid proportionately out of the three installment payments.

38. Based upon the foregoing, assuming the Court awards the amount sought for the SII, USALCO and American Securities settlements, Direct Purchaser Class Counsel would be awarded fees totaling \$30,432,266.67. Thus, with total lodestar of \$30,875,419.65, Direct Purchaser Class Counsel are still in a slightly negative multiplier situation. While all of Plaintiffs' counsel's time has yet to be awarded, even if a discount of approximately 20% were applied to account for redundancy, the requested fee amount would still produce only a modest multiplier. In a highly complex case such as this, that is certainly appropriate.

THE EFFORTS OF DIRECT PURCHASER CLASS PLAINTIFFS

39. Interim DPP Lead Counsel also seeks Case Contribution Awards of \$10,000 for each of the Direct Purchaser Class Plaintiffs⁶ (an aggregate amount of \$110,000) for their work, to date, representing the Direct Purchaser Settlement Class in the Action.⁷ Each of the Direct Purchaser Class Plaintiffs has been committed to pursuing the Direct Purchaser Settlement Class's claims since they became involved in the litigation. Specifically, Direct Purchaser Class Plaintiffs provided information necessary for filing the Complaint, and has undergone significant efforts to produce their own documents in response to Defendants' document requests. The time and resources expended by representatives for the Direct Purchaser Class Plaintiffs would have otherwise been devoted to their regular employment duties. Moreover, the efforts expended by

⁶ For purposes of this request, Direct Purchaser Class Plaintiffs SUEZ Water Environmental Services Inc.; SUEZ Water New Jersey Inc.; SUEZ Water Princeton Meadows Inc.; SUEZ Water New York Inc.; and SUEZ Water Pennsylvania Inc. are being treated as one plaintiff.

⁷ As the Action is ongoing, Interim DPP Lead Counsel may request additional Case Contribution Awards for the Direct Purchaser Class Plaintiffs in connection with future settlements.

Direct Purchaser Class Plaintiffs during the course of the Action are precisely the types of activities courts have found to support Case Contribution Awards.

I declare under penalty of perjury that the foregoing is true and correct.

/s/ James E. Cecchi

JAMES E. CECCHI

Dated: August 29, 2019