

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

**IN RE: STEEL ANTITRUST
LITIGATION**

Case No. 08-cv-5214

Honorable James B. Zagel

**THIS DOCUMENT RELATES TO
ALL DIRECT PURCHASER ACTIONS:**

Standard Iron Works v. ArcelorMittal, et al.,
Case No. 08-cv-5214

Wilmington Steel Processing Co., Inc. v.
ArcelorMittal, et al., Case No. 08-cv-5371

Capow, Inc. d/b/a Eastern States Steel v.
ArcelorMittal, et al., Case No. 08-cv-5633

Alco Industries, Inc. v. ArcelorMittal, et al.,
Case No. 08-cv-6197

Gulf Stream Builders Supply, Inc. v.
ArcelorMittal, et al., Case No. 10-cv-4236

**ORDER PRELIMINARILY APPROVING
SETTLEMENTS WITH NUCOR CORPORATION, STEEL DYNAMICS, INC. AND
SSAB SWEDISH STEEL CORPORATION,
CONDITIONALLY CERTIFYING SETTLEMENT CLASS,
AND AUTHORIZING DISSEMINATION OF NOTICE**

Upon consideration of (i) Plaintiffs' Unopposed Motion for Preliminary Approval of Settlements with Nucor Corporation ("Nucor"), Steel Dynamics, Inc. ("Steel Dynamics") and SSAB Swedish Steel Corporation ("SSAB") or collectively "Settling Defendants" (the "Motion"), (ii) the Memorandum of Law in Support of the Motion (the "Brief"), (iii) the Settlement Agreements dated September 30, 2016, September 30, 2016 and October 4, 2016,

respectively, attached as Exhibits 1-3 to the Brief (collectively, the “Settlements”), (iv) the proposed Notice and Summary Notice (Exhibits 4-5 to the Brief) and the Notice Plan contained within the Brief (collectively, the “Settlement Documents”), and (v) the oral arguments of the Parties, if any; and for good cause shown:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said Motion is GRANTED as follows:

I. Jurisdiction

1. This Court has jurisdiction over this Action and over all the parties.

II. Certification of the Proposed Settlement Class

2. The Court makes the following preliminary determinations as required by Rule 23 in light of the proposed settlement:

a. Pursuant to Fed. R. Civ. P. 23(c)(1)(B), the Court preliminarily certifies the following Settlement Class:

All persons (excluding Defendants, their present and former parents, subsidiaries, affiliates, joint ventures, co-conspirators and government entities) who Purchased Steel Products directly from any of the defendants in *Standard Iron Works v. ArcelorMittal, et al.*, Case No. 08-C-5214, or their subsidiaries or controlled affiliates at any time between April 1, 2005 and December 31, 2007 (“the Settlement Class Period”) for delivery in the United States.

For purposes of the class definition, the terms “Steel Products” and “Purchased” are more specifically defined as follows:

“Steel Products” are defined as products derived from raw carbon steel and sold directly by any of the Defendants or their subsidiaries or controlled affiliates in the United States, including all carbon steel slabs, plates, sheet and coil products, galvanized and other coated sheet products; billets, blooms, rebar, merchant bar, beams and other structural shapes; and all other steel products derived from raw carbon steel and sold by Defendants except as specifically excluded below.

“Steel Products” specifically exclude the following product categories: stainless steel; grain-oriented electrical steel; tin mill products; clad plate (i.e., nickel, stainless or copper clad plate); steel pipe and other tubular products; “special bar quality” products; wire rod and other wire products; grinding balls; fabricated rebar products; fabricated

steel joist, decking, fence posts and other fabricated building products; welded steel blanks; and steel products purchased under toll processing agreements.

The term “Purchased” includes all transactions for which pricing was negotiated during the class period and delivery was received during the class period. The class definition also includes transactions for which a sales contract was negotiated before the class period but (i) delivery was received during the class period and (ii) the actual transaction price under the contract was adjusted (or indexed) based on market pricing that prevailed during the class period.

See Settlements ¶ 1.

b. Pursuant to Rule 23(a)(1), the Court preliminarily determines that the members of the Settlement Class are ascertainable from the reasonably accessible records available to Co-Lead Class Counsel and Settling Defendants and that members of the Settlement Class are so numerous that their joinder before the Court would be impracticable.

c. Pursuant to Fed. R. Civ. P. 23(a)(2) and 23(c)(1)(B), the Court preliminarily determines that Plaintiffs have alleged one or more questions of fact or law common to the Settlement Class, including whether Settling Defendants violated federal antitrust law by allegedly engaging in coordinated production cuts in order to raise, maintain or stabilize prices above competitive levels with respect to Steel Products.

d. Named Plaintiffs Standard Iron Works, Wilmington Steel Processing Co., Inc., Capow, Inc. d/b/a Eastern States Steel, Alco Industries, Inc., and Gulf Stream Builders Supply, Inc. (collectively, “Plaintiffs”), are hereby conditionally appointed as representatives of the Settlement Class, for the following reasons:

i. Pursuant to Rule 23(a)(3), the Court preliminarily determines that the Plaintiffs’ claims are typical of the claims of the proposed Settlement Class. Plaintiffs allege on behalf of the Settlement Class the same manner of injury from the same course of conduct that they complain of

themselves, and Plaintiffs assert on their own behalf the same legal theory that they assert for the Settlement Class; and

ii. Pursuant to Rule 23(a)(4), the Court preliminarily determines that Plaintiffs will fairly and adequately protect the interests of the Settlement Class. Plaintiffs' interests do not conflict with the interests of absent members of the Class. All of the Settlement Class members share a common interest in proving Defendants' alleged anticompetitive conduct, and all Settlement Class members share a common interest in recovering the overcharge damages sought in the Complaints. Moreover, any Settlement Class member that wishes to opt out will be given an opportunity to do so. Furthermore, Plaintiffs have demonstrated the ability and incentive to represent the Settlement Class in this case, given the vigor with which they have prosecuted this action.

e. Pursuant to Rule 23(b)(3), the Court preliminarily determines that, in connection with and in light of the proposed Settlements, common questions of law and fact predominate over questions affecting only individual members. In light of the class-wide claims, issues, and defenses involved, the issues in this Action that are subject to generalized proof, and thus applicable to the Settlement Class as a whole, predominate over those issues that are subject only to individualized proof.

f. Also pursuant to Rule 23(b)(3), the Court preliminarily determines that, in connection with and in light of the proposed Settlements, a class action is superior to other available methods for the fair and efficient adjudication of this action. The Court believes it is desirable, for purposes of judicial and litigation efficiency, to concentrate the claims of the Settlement Class in a single action. The Court also believes that the class is manageable in light of the Settlements preliminarily approved in this Order.

g. The Court's preliminary determinations and certification of the Settlement Class, and Settling Defendants' lack of opposition to such certification, have no bearing on and are without prejudice to the issues on any future motion for certification of a litigation class that may be filed in this or any related action.

h. Pursuant to Fed. R. Civ. P. 23(c)(1)(B) and 23(g), the Court having considered the factors provided in Rule 23(g)(1)(A), the following counsel (whom this Court previously appointed as Co-Lead Counsel for the Class) are hereby conditionally appointed as Co-Lead Counsel for the Settlement Class (“Class Counsel”):

KELLOGG, HUBER, HANSEN, TODD,
EVANS, & FIGEL, P.L.L.C.
Sumner Square
1615 M Street, N.W., Suite 400
Washington, DC 20036

FINE, KAPLAN AND BLACK, R.P.C.
One South Broad Street, 23rd Floor
Philadelphia, PA 19107

III. Preliminary Approval of the Proposed Settlements

3. Upon review of the record and the Settlement Documents, the Court finds that the proposed Settlements – which include, *inter alia*, cash payments of \$23,400,000 by Nucor, \$4,600,000 by Steel Dynamics, and \$2,000,000 by SSAB for the benefit of the Settlement Class, in exchange for, *inter alia*, dismissal of the litigation with prejudice and releases of claims by Plaintiffs and the Settlement Class as set forth in the Settlements – were reached by good faith arm’s-length negotiations by highly experienced counsel, after years of litigation, and upon a developed litigation record. The Settlements fall within the range of reasonable and possibly approvable settlements, and are hereby preliminarily approved, subject to further consideration at the Fairness Hearing described below.

IV. Approval of the Plan of Notice to the Settlement Class

4. The proposed forms of notice to Settlement Class members of the pendency of this Class Action and the proposed Settlements, including the Notice and the Summary Notice (the “Notices”), and the proposed methods of notice dissemination described in the Preliminary Approval Brief (the “Notice Plan”) satisfy the requirements of Rule 23(e) of the Federal Rules

of Civil Procedure and due process of law, are otherwise fair and reasonable, and therefore are approved.

V. Appointment of the Settlement Administrator

5. The Court appoints The Garden City Group, Inc. to serve as the Settlement Administrator to assist Class Counsel in disseminating the notice and, if applicable, with administering class member claims, distributing Notices and claim forms, and doing all that is reasonably necessary to administer the Settlements. In accordance with the Settlements, Co-Lead Class Counsel shall submit to the Court for approval all reasonable expenses incurred by the Settlement Administrator to be paid out of the Settlement Fund.

VI. The Settlement Schedule and the Final Fairness Hearing

6. A hearing on final approval (the “Fairness Hearing”) shall be held before this Court on February 16, 2017, at 12:30 p.m., in Courtroom 1719, Everett McKinley Dirksen United States Courthouse, 219 South Dearborn Street, Chicago, IL 60604. At the Fairness Hearing, the Court will consider, *inter alia*:

- a. whether the Settlement Class meets the requirements for final certification for settlement purposes under Fed. R. Civ. P. 23;
- b. the fairness, reasonableness and adequacy of the Settlements and whether the Settlements should be finally approved;
- c. whether the Notices and Notice Plan satisfied the requirements of Fed. R. Civ. P. 23 and due process;
- d. whether the Court should award attorneys’ fees and approve reimbursement of expenses to Co-Lead Class Counsel, and in what amount(s);
- e. whether the Court should approve incentive awards to the class representatives, and in what amounts(s);

- f. whether the Court should approve a proposed plan of allocation and distribution of settlement proceeds; and
- g. whether entry of a final judgment terminating this litigation should be entered.

The Fairness Hearing may be rescheduled or continued; in this event, the Court will furnish all counsel with appropriate notice. Co-Lead Class Counsel shall be responsible for communicating any such notice promptly to the Settlement Class by posting conspicuous notice on the settlement website.

7. Co-Lead Class Counsel and the Settlement Administrator shall provide notice to the Settlement Class substantially in accordance with the forms and schedule set forth in the Notice Plan.

8. Any request for exclusion from the Settlement Class must be delivered to the Settlement Administrator on or before January 12, 2017. All requests for exclusion must be in writing and include: (i) the Settlement Class member's name, mailing address, email address and telephone number; (ii) a request to opt out of the Nucor, Steel Dynamics and/or SSAB Settlements; (iii) the case name and number: *In re Steel Antitrust Litigation*, Case No. 08-cv-5214, United States District Court for the Northern District of Illinois, Eastern Division (Judge Zagel); and (iv) a statement of all trade or business names and addresses used by the requestor, as well as any parents, subsidiaries, or affiliates that directly purchased Steel Products from any of the Defendants during the Settlement Class Period.

9. Any Objection to the Settlements, Co-Lead Class Counsel's fee and expense petition, the petition for incentive awards for the class representatives, or the proposed plan of allocation and distribution shall be filed in this Court (directed to the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division, Everett McKinley Dirksen United States Courthouse, 219 South Dearborn Street, Chicago, IL 60604), and served via U.S.

Mail on Class Counsel, on or before January 12, 2017. Any such Objection shall include: (i) the Settlement Class member's name, mailing address, email address and telephone number; (ii) a statement saying that the Settlement Class member objects to the Settlements or one or more of the petitions or the plan of allocation and distribution, and identifying which one(s); (iii) the case name and number: *In re Steel Antitrust Litigation*, Case No. 08-cv-5214, United States District Court for the Northern District of Illinois, Eastern Division (Judge Zagel); (iv) a statement certifying membership in the Settlement Class; and (v) a statement of the reasons for the objection and any legal or evidentiary supporting materials.

10. Any Settlement Class member who wishes to appear in person and object at the Fairness Hearing must file a Notice of Intent to Appear, and serve it on Co-Lead Class Counsel, on or before January 12, 2017. Any Notice of Intent to Appear shall include: (i) the Settlement Class member's (and, if applicable, the Settlement Class member's attorney's) name, mailing address, email address and telephone number; (ii) the objection, including any supporting papers; and (iii) the name and address of any witnesses to be presented at the Final Approval Hearing, together with a statement as to the matters on which they wish to testify and a summary of the proposed testimony.

11. All persons and entities who fail to file an Objection and/or Notice of Intent to Appear as provided above shall be deemed to have waived any objections and will not be heard at the Fairness Hearing.

12. No later than thirty (30) days after entry of this Order, Class Counsel shall file their motion(s) and/or petition(s) for attorneys' fees, reimbursement of litigation expenses, incentive awards for the class representatives, and proposed plan of allocation for the Settlement Funds.

13. Plaintiffs' motion for final settlement approval, an affidavit of compliance with the Notice Plan, and responses to any timely filed objections, shall be filed no later than fifteen (15) days before the Fairness Hearing and shall be posted on the settlement website in accordance with the Notice Plan.

VII. Administrative Matters

14. The Court finds that the Settlement Funds to be established pursuant to the Settlements are "qualified settlement funds" as defined in Section 468B of the Internal Revenue Code of 1986, as amended, and Section 1.468B-1(c) of the Treasury Regulations in that they satisfy each of the following requirements:

- a. The Settlement Funds are established pursuant to an order of this Court and are subject to the continuing jurisdiction of this Court;
- b. The Settlement Funds are established to resolve or satisfy one or more claims that have resulted or may result from an event that has occurred and that has given rise to at least one claim asserting liabilities arising out of an alleged violation of law; and
- c. The assets of the Settlement Funds are segregated from other assets of the transferors of payments to the Settlement Funds.

15. In the event that the one or more of the Settlements do(es) not become Final, the Parties to that/those Settlement(s) will return to litigation of this Action as if said Settlement(s) had never happened, with the Parties bound by all Orders of the Court regardless of the date of entry, and said Settlement Agreements, Settlements, and all related proceedings shall, except as expressly provided to the contrary in said Settlement Agreements, become null and void, and shall have no further force and effect; Plaintiffs and the Settlement Class shall retain full rights to assert any and all causes of action against any applicable Released Party (as that term is

defined in the applicable Settlement Agreements), and any applicable Released Party shall retain any and all defenses and counterclaims thereto.

16. Any capitalized terms not defined herein shall have the meaning ascribed to them in the Settlement Agreements.

SO ORDERED this 3rd day of November, 2016.

A handwritten signature in black ink, appearing to read "Manish S. Shah", written over a horizontal line.

Honorable Manish S. Shah
United States District Judge