IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

IN RE: STEEL ANTITRUST LITIGATION

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**

Case No. 08-cv-5214

Honorable James B. Zagel

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR FINAL APPROVAL OF SETTLEMENTS WITH ARCELORMITTAL AND UNITED STATES STEEL CORPORATION

KELLOGG, HUBER, HANSEN, TODD, EVANS & FIGEL, P.L.L.C.
Michael K. Kellogg
Mark C. Hansen
Michael J. Guzman
Steven F. Benz
Sumner Square
1615 M Street, NW, Suite 400
Washington, DC 20036

FINE, KAPLAN AND BLACK, R.P.C.
Roberta D. Liebenberg
Donald L. Perelman
Jeffrey S. Istvan
Matthew Duncan
Adam J. Pessin
One South Broad Street, 23rd Floor
Philadelphia, PA 19107

Interim Co-Lead Counsel for Plaintiffs and the Proposed Class

FREED KANNER LONDON & MILLEN LLC
Michael J. Freed
Steven A. Kanner
2201 Waukegan Road, Suite 130
Bannockburn, IL 60015

Liaison Counsel for Plaintiffs and the Proposed Class

INTRODUCTION

Plaintiffs submit this memorandum in support of their motion for final approval of their proposed class action settlements with ArcelorMittal S.A. and ArcelorMittal USA LLC (collectively "ArcelorMittal"), and United States Steel Corporation ("U.S. Steel"), for $90,000,000 and $58,000,000, respectively (collectively, the "Settlements"). On June 13, 2014 (ArcelorMittal) and July 14, 2014 (U.S. Steel), this Court granted preliminary approval of the proposed Settlements, conditionally certified a settlement class, conditionally appointed settlement class representatives and settlement Co-Lead Counsel, directed that class notices be disseminated, approved the notices and notice plans, and scheduled the final approval and fairness hearing for October 17, 2014. *See* Dkt. Nos. 493 (ArcelorMittal), 502 (U.S. Steel).

The Settlements provide for a total payment of $148 million plus information useful to Plaintiffs in the continued prosecution of their case against the remaining Defendants, along with other terms described below. Together with prior settlements with CMC ($3.99 million), AK Steel ($5.8 million) and Gerdau ($6.1 million), the Settlements provide a total common fund recovery of $163.9 million for the Class, with three Defendants remaining in the case.

The Court should grant Plaintiffs' motion for final approval because the Settlements are fair, adequate, and reasonable. Indeed, they bear all the indicia of fairness emphasized by the Seventh Circuit. First, the Settlements provide significant monetary and non-monetary benefits relative to the risks of continued litigation. Second, they guarantee an immediate and substantial cash recovery in what otherwise will be a complex, protracted, and costly case. Third, there are no objections to date, and only a few opt outs. Fourth, the Settlements are the product of good-faith, arm's-length negotiations and are endorsed by class counsel with substantial experience in similar cases. Fifth, the Settlements follow extensive discovery and contested motion practice

regarding all aspects of the claims, providing important information about the risks of continued litigation. The Settlements, in short, deliver an outstanding result for the Class.

BACKGROUND

On September 12, 2008, Plaintiff Standard Iron Works filed a class action complaint captioned *Standard Iron Works v. ArcelorMittal, et al.*, Case No. 08-C-5214, Dkt. No. 1. That case was then consolidated with several related cases filed in this District, in which Plaintiffs allege that Defendants unlawfully conspired to restrict the output of steel products in the United States in violation of the Sherman Act.[1]

The Court denied Defendants' motions to dismiss on June 12, 2009, Dkt. No. 170, after which discovery commenced. Class certification discovery (which included some discovery into the merits) took several years to complete, with the parties producing millions of pages of documents and computerized data for more than 30 million transactions involving steel products. A total of 12 expert reports or witness declarations were submitted in connection with class certification, and the relevant witnesses were deposed.

On May 24, 2012, Plaintiffs filed their pending motion for class certification. Dkt. No. 305. Briefing on that motion (and Defendants' corresponding *Daubert* motions) was completed in January 2014, followed by a three-day hearing on the *Daubert* and class certification issues. The Court denied Defendants' *Daubert* motions at the close of the hearing, Dkt. No. 470, and the

[1] Putative class representatives filed seven direct purchaser class actions in this Court, which have been consolidated in this action: *Standard Iron Works v. ArcelorMittal, et al.*, No. 08-cv-5214; *Wilmington Steel Processing Co., Inc. v. ArcelorMittal, et al.*, No. 08-cv-5371; *Capow, Inc. v. ArcelorMittal, et al.*, No. 08-cv-5633; *MPM Display, Inc. v. ArcelorMittal, et al.*, No. 08-cv-5700; *REM Sys., Inc. v. ArcelorMittal, et al.*, No. 08-cv-5942; *Alco Indus. Inc. v. ArcelorMittal, et al.*, No. 08-cv-6197; and *Gulf Stream Builders Supply, Inc. v. ArcelorMittal, et al.*, No. 10-cv-4236. The *MPM Display* and *REM Systems* cases were voluntarily dismissed.

parties subsequently filed proposed findings of fact and conclusions of law relating to class certification. Dkt. Nos. 479 and 480.

Before the conclusion of the class certification hearing, Plaintiffs entered into settlements with CMC, AK Steel, and Gerdau, for a total of $15.9 million. The Court granted preliminary approval of these settlements on April 11, 2014, Dkt. No. 469, and a final approval hearing was held on July 10, 2014.[2]

Soon thereafter, ArcelorMittal agreed to settle for $90 million and U.S. Steel agreed to settle for $58 million. The Court preliminarily approved the ArcelorMittal settlement on June 13, 2014, Dkt. No. 493, and preliminarily approved the U.S. Steel settlement on July 14, 2014. Dkt. No. 502. The final approval hearing for both settlements is scheduled for October 17, 2014.

The reaction of the Class has been overwhelmingly favorable. Notices of the Settlements were delivered by direct mail to more than 5,300 class members, supplemented by publication notice in the *Wall Street Journal*, several trade publications, and on a dedicated website. *See* Affidavit of Jose C. Fraga Regarding Mailing Notice and Requests for Exclusion in Connection with the ArcelorMittal and U.S. Steel Settlements ("Fraga Affid.") (attached as Ex. 1). Of the more than 5,300 class members who received notice, 3 opted out of the ArcelorMittal settlement, 4 opted out of the U.S. Steel settlement, *id.* ¶ 15, and (to date) no class member has objected to either settlement.

[2] No Class members objected to the CMC, AK Steel and Gerdau settlements and the Court indicated its intention to finally approve these settlements. *See* 7/10/14 Hearing Tr. at 17-19. After the final approval hearing but before entry of the Court's final approval order, Defendants CMC, AK Steel and Gerdau asked the Court to delay entry of the final approval order until October 17, 2014 to give the Defendants extra time to carry out their notice obligations under the Class Action Fairness Act. *See* 7/16/2014 Letter to Court from Defendants CMC, AK Steel and Gerdau.

THE SETTLEMENTS

The proposed Settlements with ArcelorMittal and U.S. Steel were the product of extensive good-faith, arm's-length negotiations. Over a period of months, Class Counsel engaged in discussions with counsel for the Settling Defendants, culminating in the compromises embodied in the attached settlement agreements. *See* Ex. 2 ("ArcelorMittal Settlement"); Ex. 3 ("U.S. Steel Settlement"). The agreements provide that Settling Defendants will pay a total of $148 million in cash for the benefit of the Settlement Class. *See* ArcelorMittal Settlement ¶ 9 ($90,000,000); U.S. Steel Settlement ¶ 9 ($58,000,000). Settling Defendants have deposited these sums into separate escrow accounts, in which all Settlement funds will be invested in United States Treasury bills or other instruments guaranteed by the full faith and credit of the United States for the benefit of the Class.

The Settlements also require the Settling Defendants to assist Class Counsel in their prosecution of this case against the remaining Defendants by producing evidence relating to the merits, authenticating documents, and making certain key executive witnesses available for interviews. *See* ArcelorMittal Settlement ¶ 18, U.S. Steel Settlement ¶ 18.

The Settlements bind Settling Defendants, Plaintiffs and all members of the Settlement Class, which is defined as all persons 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 for delivery in the United States. ArcelorMittal Settlement ¶ 1, U.S. Steel Settlement ¶ 1. The terms "steel products" and "purchased" are defined more specifically in the settlement agreements. Excluded from the Settlement Class are Defendants, their present and former parents, subsidiaries, affiliates, joint ventures, co-conspirators and government entities. *Id.*

Also excluded are any direct purchasers who elect to opt out of the Settlements.

The agreements release Settling Defendants (and their parents, subsidiaries, affiliates, predecessors and successors) from all claims by Plaintiffs and the Settlement Class (except for those electing to opt out) relating to conduct alleged in this matter. ArcelorMittal Settlement ¶ 13, U.S. Steel Settlement ¶ 13. Settling Defendants' sales of steel products to members of the Settlement Class, however, remain in the case for purposes of litigation against the remaining defendants.

CLASS NOTICE

Consistent with the notice plan presented to the Court at the preliminary approval stage, *see* Dkt. No 488-1 at 18 (ArcelorMittal) and Dkt. No. 496-1 at 19 (U.S. Steel), the Class was notified of the Settlements. Using Defendants' transactional sales data to identify as many customer names and addresses as possible, notices were mailed directly to 5,346 potential Class members at approximately 11,000 addresses. *See* Fraga Affid. ¶ 10. The notices also were posted on a dedicated website established for the Settlements, www.steelantitrustsettlement.com, and summary versions of the notices were published in the national edition of *The Wall Street Journal* as well as several industry trade journals believed to be read by Class members. *See id.* ¶ 12. The trade journals were selected based on readership, target audience, dates of publication, and lead time requirements relative to the final approval hearing. As noted, only 3 Class members opted out of the ArcelorMittal settlement after receiving the notice; only 4 opted out of the U.S. Steel settlement after receiving notice; and, as of the date of this filing, no class member objected to either settlement. *See id.* ¶ 15 (opt outs); Joint Decl. of Co-Lead Counsel at ¶ 11 (Ex. 4 attached) ("Joint Decl.") (no objections to date).

On September 30, 2014, a third notice was mailed to all Class members, who were given another opportunity to object in order to assure compliance with the Seventh Circuit's recent decision in *Redman v. RadioShack Corp.*, No. 11-cv-6741, 2014 WL 4654477 (7th Cir. Sept. 19, 2014), which expressed a preference for the objection period to expire after the filing of class counsel's fee petition. The notices mailed on September 30, 2014, directed Class members to the settlement website, www.steelantitrustsettlement.com, where the final approval and fee submissions are available for Class members to review. *See* Ex. 1, Fraga Affid. (class notices).

ARGUMENT

I. THE SETTLEMENTS MERIT FINAL APPROVAL.

Settling and quieting litigation promotes the public interest, particularly in the context of class actions. *See Isby v. Bayh*, 75 F.3d 1191, 1196 (7th Cir. 1996) ("Federal courts naturally favor the settlement of class action litigation."). Indeed, "[i]t is axiomatic that the federal courts look with great favor upon the voluntary resolution of litigation through settlement. In the class action context in particular, there is an overriding public interest in favor of settlement." *Armstrong v. Bd. of Sch. Directors of the City of Milwaukee*, 616 F.2d 305, 312-13 (7th Cir. 1980), *overruled on other grounds by Felzen v. Andreas*, 134 F.3d 873 (7th Cir. 1998) (citations omitted).

Final approval of a class action settlement turns on whether the proposed settlement, taken as a whole, is fair, reasonable, and adequate. *See* Fed. R. Civ. P. 23(e); *Pearson v. NBTY, Inc.*, No 11-cv-7972, 2014 WL 30676, *2 (N.D. Ill. Jan. 3, 2014); *Isby*, 75 F.3d at 1196. The Seventh Circuit has emphasized several factors the Court must consider in its analysis of this question under Rule 23, including "the strength of plaintiffs' case compared to the amount of

defendants' settlement offer, an assessment of the likely complexity, length and expense of the litigation, an evaluation of the amount of opposition to settlement among affected parties, the opinion of competent counsel, and the stage of the proceedings and the amount of discovery completed at the time of settlement." *Synfuel Technologies, Inc. v. DHL Express (USA), Inc.*, 463 F.3d 646, 653 (7th Cir. 2006) (quoting *Isby*, 75 F.3d at 1199); *see also Pearson*, 2014 WL 30676, at *2 (same).

A. The Settlements Are Fair in Light of the Strengths and Weaknesses of the Case Compared to Defendants' Settlement Offer.

"[T]he first factor, the relative strength of plaintiffs' case on the merits as compared to what the defendants offer by way of settlement, is the most important consideration." *Isby*, 75 F.3d at 1199.

In many complex cases—and this one is no exception—"it is difficult to calculate the precise probability of success Plaintiffs may experience through continued litigation…." *Pearson*, 2014 WL 30676, at *3. Nevertheless, it is necessary for the Court to consider possible outcomes and risks. *See Synfuel*, 463 F.3d at 653 ("the court should estimate the range of possible outcomes and ascribe a probability to each point on the range" in order to develop a "ballpark valuation" for the case) (internal citations and punctuation marks omitted).

While Plaintiffs believe their case is strong for purposes of both class certification and the merits, and have estimated total (untrebled) Class damages of several billion dollars, close scrutiny of the disputed issues highlights the risks of continued litigation. For example, Defendants have contested all aspects of liability from the start (*e.g.*, whether, how, and when the alleged conspiracy occurred), and, moreover, have devoted exhaustive briefing, expert reports, and evidentiary presentation to opposing class certification and disputing the elements of class-

wide impact and damages. Defendants have framed a large number of issues as potentially dispositive under Rule 23, including *Daubert* arguments (multiple arguments directed at two different experts), an array of arguments relating to industry economics, legal and factual challenges to Plaintiffs' proposed damage model, disputes about whether certain contemporaneous documents can be used to show class-wide injury, challenges to whether the standards of Rule 23(a) are met, and more. *See, e.g.*, Dkt. No. 358 (Defendants' class certification opposition); Nos. 360, 363, 431, and 433 (Defendants' *Daubert* submissions); No. 480 (Defendants' proposed findings of fact and conclusions of law).

Plaintiffs believe that each and every one of these arguments is incorrect, but losing on any one of them could jeopardize Plaintiffs' case for class certification—and indeed Plaintiffs must prevail on these issues twice, once before this Court and once before the Court of Appeals in the context of a petition for interlocutory review. *See* Fed. R. Civ. P. 23(f). After class certification, Plaintiffs still must run the gauntlet on the merits, including the risks of summary judgment, renewed *Daubert* motions, evidentiary challenges, trial risks on liability and damages, post-trial motions, and the possibility of appeals up to and including the Supreme Court.

If the total number of potentially dispositive issues were tallied—and Plaintiffs' potential recovery were discounted in a "ballpark" way to reflect every step at which the case could be lost or its value diminished, see *Synfuel*, 463 F.3d at 653—it is clear that the risks of continued litigation warrant a substantial settlement discount.

The Settlements nevertheless provide a very large sum of money for the Class. By any measure, settlements of $90 million and $58 million represent a meaningful cash benefit to a class of more than 5,000 members, particularly in a case in which the Class retains the right to seek full damages from the non-settling Defendants—including damages on class period sales

made by ArcelorMittal and U.S. Steel—under principles of joint and several liability. *See Paper Sys. Inc. v. Nippon Paper Indus. Co., Ltd.*, 281 F.3d 629, 632 (7th Cir. 2002) ("[E]ach member of a conspiracy is liable for all damages caused by the conspiracy's entire output."). In this context, the Settlements provide a substantial guaranteed benefit without extinguishing the "net expected value of continued litigation" against the remaining defendants. *See Synfuel*, 463 F.3d at 653 (citing *Reynolds v. Beneficial Nat'l Bank*, 288 F.3d 277, 284-85 (7th Cir. 2002)).[3]

Nor is cash the only benefit. The Settlements also require Settling Defendants to, *inter alia*, produce documents relevant to the merits; make certain key executives available for interviews and depositions; assist in establishing admissibility of their records; and assist Plaintiffs in locating former employees. *See* ArcelorMittal Settlement ¶ 18, U.S. Steel Settlement ¶ 18. These terms will be useful to the Class in litigating against the non-settling Defendants. *See In re Lawnmower Engine Horsepower Mktg. & Sales Practices Litig.*, 733 F. Supp. 2d 997, 1009 (E.D. Wisc. 2010) (recognizing the value of such provisions); *Bell Atl. Corp. v. Bolger*, 2 F.3d 1304, 1311 (3d Cir. 1993) ("Despite the difficulties they pose to measurement, nonpecuniary benefits ... may support a settlement."). Indeed, courts have recognized that such terms can provide a "substantial benefit" to cartel plaintiffs, which "strongly militates toward approval of the [s]ettlement [a]greement." *In re Linerboard Antitrust Litig.*, 292 F. Supp. 2d

[3] In a typical case in which the proposed settlement ends the litigation, the court's "net expected value of continued litigation" analysis focuses on the estimated class recovery discounted by the risks of litigating. *Synfuel*, 463 F.3d at 653 (noting that a "ballpark valuation" is usually the best one can do). But the analysis here is different, because the case will continue against the non-settling Defendants, which remain jointly and severally liable for the entire class damages. In this context, the Settlements do not extinguish the net expected value of the case, while providing a meaningful guaranteed recovery for the Class.

631, 643 (E.D. Pa. 2003) (collecting cases); *see also In re Packaged Ice Antitrust Litig.*, 08-MD-01952, 2010 WL 3070161, at *4 (E.D. Mich. Aug. 2, 2010) ("Courts approving partial settlements in antitrust class actions recognize the significant value of cooperation"); *In re Pressure Sensitive Labelstock Antitrust Litig.*, 584 F. Supp. 2d 697, 702 (M.D. Pa. 2008) (same).

The Settlements also will provide an important financial boost to the litigation fund that Class Counsel will use to prosecute the case against the remaining Defendants, again conferring benefits on all Class members. *See Linerboard*, 292 F. Supp. 2d at 643.

For all of these reasons, the Settlements are fair, reasonable, and provide substantial benefits warranting final approval.

B. The Complexity, Length, and Expense of Further Litigation Supports Approval of the Settlements.

Another "major benefit of the settlement is that Class Members may obtain these benefits much more quickly than had the parties not settled." *Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 583 (N.D. Ill. 2011). Antitrust cases are notoriously protracted—this one has been pending more than six years—and any adjudicated recovery for the Class would almost certainly be many more years away. "Were the Class Members required to await the outcome of a trial and inevitable appeal, [ ] they would not receive benefits for many years, if indeed they received any at all." *In re AT&T Mobility Wireless Data Servs. Sales Tax Litig.*, 789 F. Supp. 2d 935, 961 (N.D. Ill. 2011).

Courts therefore "assess[] … the likely complexity, length and expense of the litigation" in determining the fairness of a settlement. *Isby*, 75 F.3d at 1199. Here, as the Court is aware, discovery has been bifurcated, with certain merits discovery deferred until after class certification. That discovery remains to be completed—including all merits depositions—and

will take some time. At or near the close of merits discovery, moreover, the parties likely will engage in lengthy rounds of motion practice and briefing on summary judgment, expert issues, evidentiary disputes, and other trial-related issues. Preparing complex antitrust litigation for trial is no quick and easy task; and no matter the trial's outcome, appeals almost certainly would follow, adding another year or more to the lifespan of the case. Each subsequent step would require the Class to incur additional expense and delay without the guarantee of a larger recovery—or any recovery at all.

In these circumstances—where the Settlements provide substantial and immediate cash recovery while avoiding the expense, risk and delay associated with class certification, summary judgment, *Daubert*, trial, and appeal in a complex case—courts in this circuit have deemed settlements to be fair and reasonable. *See, e.g.*, *Pearson*, 2014 WL 30676, *3 ("Should Plaintiffs continue to litigate, any recovery or benefit would not likely be realized for years."); *Am. Int'l Grp., Inc. v. ACE INA Holdings, Inc.*, 07-cv-2898, 2012 WL 651727, at *5 (N.D. Ill. Feb. 28, 2012); *In re AT&T Mobility Wireless Data Servs. Sales Litig.*, 270 F.R.D. 330, 347 (N.D. Ill. 2010) ("[A] future victory is not as valuable as a present victory.").

C. The Absence of Objections and the Small Number of Opt-outs Supports Final Approval.

As described above, the Class was notified of the Settlements by a combination of (i) three direct mailings of notices to all Class members whose names and addresses were identified in Defendants' transaction data; (ii) publication notice in the *Wall Street Journal* and various trade journals read by Class members; and (iii) posting on the steel settlement website, www.steelantitrustsettlement.com. *See* page 5, *supra*; Dkt. No. 488-1 at 19-20; Dkt. No. 496-1 at 19-20 (describing notice plan in more detail); Fraga Affid. ¶¶ 2-14. This plan allowed for

direct mailing to over 5,000 potential Class members, *see id.*, and comports with both Rule 23 and due process. *See, e.g.*, Fed. R. Civ. P. 23(c)(2)(B) (requiring "best notice that is practicable under the circumstances including individual notice to all members who can be identified through reasonable effort"); *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 175-77 (1974) (same standard satisfies due process). Furthermore, the extension of the objection deadline to October 15, 2014, satisfies the Seventh Circuit's recently expressed preference for the filing of class counsel's fee petition to precede the objection deadline. *See Redman*, 2014 WL 4654477 (7th Cir. Sept. 19, 2014).

The time for Class members to opt out expired on August 19, 2014 for the ArcelorMittal settlement and September 10, 2014 for the U.S. Steel settlement. Of the more than 5,300 estimated potential Class members, only 3 and 4 have opted out of the ArcelorMittal and U.S. Steel settlements, respectively. *See* Fraga Affid. ¶ 15. Significantly, no Class members have objected to date. *See* Joint Decl. of Co-Lead Counsel at ¶ 11 (Ex. 4 attached).

The absence of objections and the small number of opt outs, when compared to the total number of Class members, supports the fairness and adequacy of the Settlements, particularly given that most Class members are businesses, many of whom have access to their own counsel. *See Am. Int'l Grp., Inc.*, 2012 WL 651727, at *6 (noting that a lack of opposition is particularly meaningful where class members include sophisticated companies); *In re Processed Egg Products Antitrust Litig.*, 284 F.R.D. 249, 269 (E.D. Pa. 2012) (same). Courts have concluded that, when "using the number of class members as a metric," if "there has been almost no opposition to the settlement," "[t]his indicates that the class members consider the settlement to be in their best interest." *Am. Int'l Grp., Inc.*, 2012 WL 651727, at *6 (collecting cases).

D. The Settlements Are the Product of Good Faith, Arm's-Length Negotiations and Are Endorsed by Experienced Counsel.

"A strong presumption of fairness attaches to a settlement agreement when it is the result of [an arm's-length] negotiation." *Great Neck Capital Appreciation Inv. P'ship, L.P. v. PricewaterhouseCoopers, L.L.P.*, 212 F.R.D. 400, 410 (E.D. Wis. 2002). The Settlements here are the result of hard-fought and contentious litigation; there could be no credible suggestion of collusion among the parties. Moreover, neither the Settlements nor the Settling Defendants provide for any payment of attorneys' fees, minimizing the risk that counsel prioritized their interests ahead of the Class. The Settlements were reached after months of arm's-length negotiations among experienced counsel well versed in the strengths and weaknesses of the case.

The opinion of experienced attorneys who represented the Class effectively throughout the case is entitled to significant weight. *See, e.g., Isby*, 75 F.3d at 1200 ("[T]he district court was entitled to give consideration to the opinion of competent counsel that settlement was fair, reasonable and adequate."); *In re Mexico Money Transfer Litig. (W. Union & Valuta)*, 164 F. Supp. 2d 1002, 1020 (N.D. Ill. 2000), *aff'd sub nom. In re Mexico Money Transfer Litig.*, 267 F.3d 743 (7th Cir. 2001) ("The court places significant weight on the unanimously strong endorsement of these settlements by Plaintiffs' well-respected attorneys.").

Here, Class Counsel investigated and developed all aspects of these claims before filing, and have pursued them effectively on behalf of the Class ever since (notably, without assistance from government proceedings). Based on Class Counsel's decades of experience in similar litigation—including the negotiation of numerous antitrust class action settlements approved by

the federal courts, as well as prosecuting similar cases through trial and appeal[4]—counsel have determined that the Settlements are fair, reasonable, and adequate. *See* Ex. 4, Joint Decl. ¶¶ 9-12. This factor supports final approval.

E. The Settlement Is Informed by an Extensive Discovery Record and Substantial Briefing of the Class's Claims.

To ensure that a plaintiff has access to sufficient information to evaluate its case and the proposed settlement, courts in the Seventh Circuit consider the stage of the proceedings and the discovery taken. *Isby*, 75 F.3d at 1199. Here, both the knowledge of counsel and the proceedings themselves have reached a stage where informed evaluation of the Settlements could be (and was) made relative to the risks of going forward.

The parties settled only after extensive discovery. In the six years since the case was filed, millions of pages of documents have been produced and reviewed, as well as data for over 30 million transactions involving steel products. Twelve detailed expert reports and witness declarations have been submitted on the relevant issues, the experts have been deposed, and the parties have aired their evidence and arguments in lengthy submissions at the motion to dismiss and class certification stages, as well as presentations during the three-day class certification hearing.

At this stage, counsel for the Class have deep familiarity with the legal and factual issues and the risks associated with continued litigation, such that this factor, like all those discussed above, strongly supports approval of the Settlements. *See Great Neck Capital*, 212 F.R.D. at 410

[4] For example, co-lead counsel (the Fine Kaplan and Kellogg Huber firms) recently secured a jury verdict for the plaintiff class in the *Urethane Antitrust Litigation*, No. 04-MD-1616-JWL (D. Kan. 2013), after more than eight years of hard-fought litigation. Counsel are willing and able to try a case when appropriate. In the present situation, however, the Settlements are preferable to the uncertainty of litigation against the Settling Defendants.

("[T]he settlement was reached after PwC's motion to dismiss had been decided and after merits discovery was well underway. Thus, plaintiffs' counsel's evaluation of the case was based on a reasonable amount of information.").

II. PAYMENT OF SETTLEMENT ADMINISTRATION COSTS, ATTORNEYS' FEES, REIMBURSEMENT OF LITIGATION EXPENSES TO CLASS COUNSEL, AND THE PLAN OF ALLOCATION

As described in the Class notice, funds from all Class Settlements obtained to date (*i.e.*, the aggregate $163.9 million common fund) will be used, first, to pay for reasonable expenses associated with the costs of notice and administering the settlement fund. *See* Ex. 1, Fraga Affid. at Exs. A & B (copy of notice). Through September, 2014, the costs of notice and administering the ArcelorMittal and U.S. Steel settlements total $110,442.95. Of this amount, $109,242.95 was charged by the Settlement Administrator (the Garden City Group, Inc.) for work done in connection with Class notices, the settlement website, and other settlement administration. *See* Ex. 4, Joint Decl. ¶ 13. Another $1,200 was charged by Info Tech, Inc. for identifying customer names and addresses in the transactional data for purposes of notice. *Id.*[5] Plaintiffs thus request an order from the Court (i) directing the Escrow Agent to pay these costs from the Settlement Fund directly to Garden City Group, Inc. and Info Tech, Inc., respectively, and (ii) authorizing Class Counsel to approve any future disbursements for reasonable notice and settlement administration costs.

Second, Class Counsel will petition the Court (via separate motion, filed contemporaneously) for an award of attorneys' fees and reimbursement of "out of pocket"

[5] These amounts are in addition to the $115,131.37 in notice and administration costs sought in connection with final approval of the Commercial Metals, Gerdau and AK Steel settlements. *See* Dkt. No. 494-1 (detailing these costs).

litigation expenses (*e.g.*, firm-specific expenses for copying, travel, telephone charges, computer research, etc.). For reasons explained in the fee petition, Class Counsel respectfully submit that a one-third fee is fair and reasonable on the facts of this case, and that Class Counsel should be reimbursed for all of the litigation costs they advanced because they are of the type typically covered by paying clients. *See* Dkt. Nos. ------ (memorandum, exhibits, and expert report in support of requested fee and expense reimbursement).[6]

Third, upon final approval of all five settlements, Class Counsel propose to distribute the balance of common settlement funds, after deducting Court-approved attorneys' fees and expenses (the "Net Joint Settlement Fund"), to the Class. As explained to the Court in connection with preliminary approval and to Class members in the notice, Class Counsel propose to distribute the Net Joint Settlement Fund using a *pro rata* plan of allocation, under which Class members will recover in proportion to the dollar amount of their purchases of Steel Products during the class period. *See* Dkt. No. 488-1 at 10-12; Ex. 1, Fraga Affid. at Exs. A & B (Class notice).

Class Counsel will make every effort to simplify the claims process, maximize the number of class members participating in the recovery, and distribute money to the Class as promptly as possible. As detailed in the proposed Plan of Allocation, attached as Exhibit 5 hereto, Class Counsel proposes the following process: (1) after final approval of the Settlements, personalized claim forms will be mailed directly to all Class members whose addresses can be

[6] Plaintiffs previously moved for reimbursement of $5,064,908.97 in litigation expenses in connection with final approval of the CMC, AK Steel and Gerdau settlements. *See* Dkt. No. 494-1. Those costs—principally expert-related expenses, all of which were advanced by Class counsel through years of contested litigation—also were reasonable and necessary in prosecuting the case and preparing Plaintiffs' class certification submissions, and are of the type routinely reimbursed by paying clients in similar matters. *See* Ex. 4, Joint Decl. ¶ 61.

identified from Defendants' previously produced transaction data; (2) each Class member's claim form will include a tabulation of that Class member's eligible purchases based on the data produced by Defendants in discovery; (3) class members will be asked to (a) sign and return the claim form if they accept the tabulation or (b) submit their own data if they disagree with the tabulation; (4) all Class member submissions will be evaluated and, if appropriate, eligible purchase amounts will be updated; (5) each class member's *pro rata* share of the Net Joint Settlement fund will be calculated based on all the validated claim forms returned by Class members; (6) Class Counsel will then file a motion for a Court order approving the final distribution amounts (*i.e.*, Class Counsel will deliver a final status report to the Court on the claims process and summarize the proposed amount going to each member of the Class); and (7) upon Court order approving the final distribution plan, the Net Joint Settlement Fund will be distributed to the Class.

Class Counsel's best estimate is that if the Court enters its final approval, attorney fee and expense reimbursement orders in October of 2014, the claims process can proceed promptly in late 2014 and early 2015, with the Net Joint Settlement Fund being distributed to Class members sometime in the first half of 2015.

III. THE COURT SHOULD AFFIRM ITS PRELIMINARY CERTIFICATION OF THE CLASS.

Nothing has changed to alter the propriety of the Court's preliminary certification of the Settlement Class. Accordingly, for all the reasons stated in Plaintiffs' briefing in support of preliminary approval, Dkt. No. 488-1 (ArcelorMittal) and Dkt. No. 496-1 (U.S. Steel), incorporated herein by reference, and for the additional reasons stated herein, Plaintiffs now request that the Court affirm (i) its certification of the Settlement Class; (ii) its appointment of

named plaintiffs as class representatives for the Settlement Class; and (iii) its appointment of Kellogg, Huber, Hansen, Todd, Evans, & Figel, P.L.L.C. and Fine, Kaplan and Black, R.P.C. as Co-Lead Counsel for the Settlement Class.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court: (i) grant final approval of the proposed Settlements as fair, reasonable and adequate and enter judgment accordingly; (ii) grant final certification to the Settlement Class; (iii) confirm appointment of the class representatives and Co-Lead Counsel for the Settlement Class; (iv) approve the proposed Plan of Allocation and Distribution for the Settlement funds; (v) authorize payment of Settlement notice and administration costs from the Settlement funds; and (vi) grant Plaintiffs' separate motion for attorneys' fees and reimbursement of litigation expenses.

Dated: October 1, 2014

Respectfully submitted,

/s/ *Jeffrey S. Istvan*

Michael K. Kellogg
Mark C. Hansen
Michael J. Guzman
Steven F. Benz
KELLOGG, HUBER, HANSEN, TODD, EVANS & FIGEL, P.L.L.C.
Sumner Square
1615 M Street, NW, Suite 400
Washington, DC 20036
Tel.: (202) 326-7900

Roberta D. Liebenberg
Donald L. Perelman
Jeffrey S. Istvan
Matthew Duncan
Adam J. Pessin
FINE, KAPLAN AND BLACK, R.P.C.
One South Broad Street, 23rd Floor
Philadelphia, PA 19107
Tel.: (215) 567-6565

Interim Co-Lead Counsel for Plaintiffs and the Proposed Class

Michael J. Freed
Steven A. Kanner
FREED KANNER LONDON & MILLEN LLC
2201 Waukegan Road, Suite 130
Bannockburn, IL 60015
Tel.: (224) 632-4500

Liaison Counsel for Plaintiffs and the Proposed Class

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of October 2014, I electronically filed **MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR FINAL APPROVAL OF SETTLEMENTS WITH ARCELORMITTAL AND UNITED STATES STEEL CORPORATION** with the Clerk of the Court using the CM/ECF system which sent notification of such filing to the following: All Parties Who Are Currently On The Court's Electronic Mail Notice List.

/s/ Jeffrey S. Istvan
Jeffrey S. Istvan