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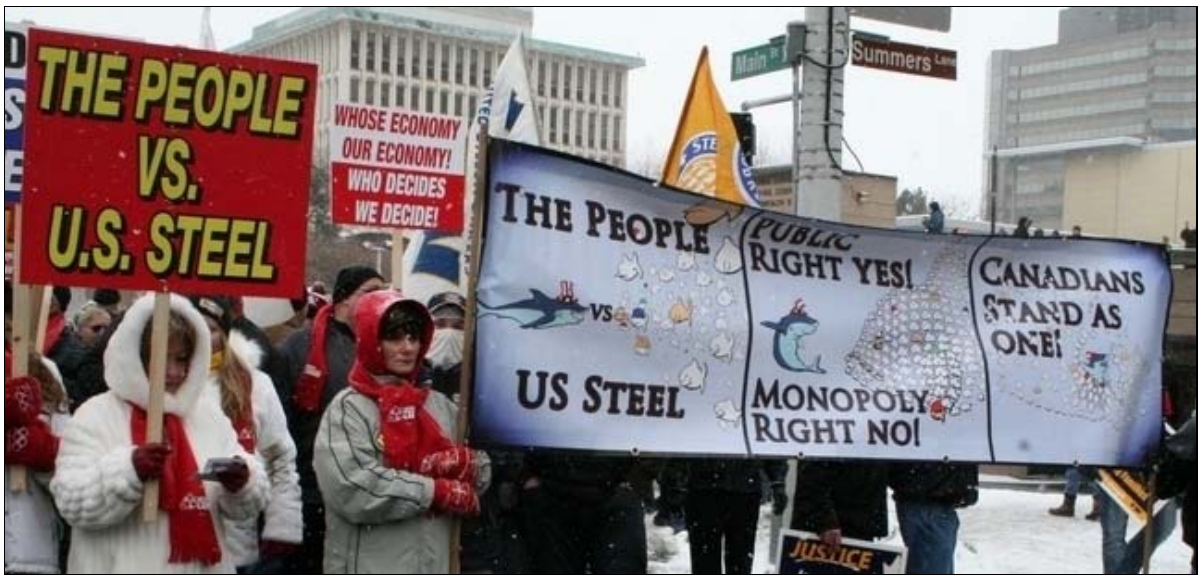
October 29, 2015

CCAA -- Wild West Show of the Monopolies Where Might Makes Right

Court Grants Motion to Expedite Appeal of Decision to Keep Secret Stelco Deal Sealed

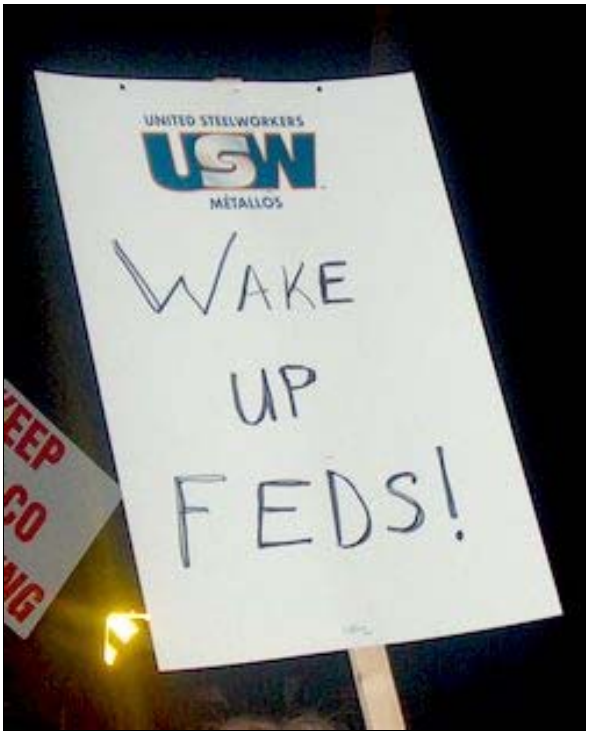


CCAA -- Wild West Show of the Monopolies Where Might Makes Right

Court Grants Motion to Expedite Appeal of Decision to Keep Secret Stelco Deal Sealed

The federal government ended its lawsuit against U.S. Steel in 2011. Both parties refused to release the contents of the deal that ended the federal court case against U.S. Steel for breaking production and employment promises made under the authority of the *Investment Canada Act*.

The U.S. monopoly signed an agreement with the federal government and made various public promises to sustain production and employment at specified levels, protect pensions, and make investments in Stelco when it seized control of the Canadian steel company in 2007. If U.S. Steel had refused to come to an agreement promising a *net benefit* to Canada, the expectation was and remains that it would not have been allowed to buy Stelco.



U.S. Steel soon broke the agreement in its entirety. The federal government eventually launched a lawsuit against U.S. Steel, which if successful, would have resulted in punishing fines and other remedies to bring the company into conformity with the law and agreement.

The federal government suddenly ended the lawsuit with a settlement in 2011 that to all intents and purposes did nothing to change U.S. Steel's destructive behaviour. The anti-Canadian rampage of U.S. Steel has resulted in a *net loss* for Canada and the present attempt with the *Companies' Creditors Arrangement Act* (CCAA) fraud to liquidate Stelco's production entirely, renege on promises to make the pension funds whole by the end of 2015 and refuse to meet its other social responsibilities.

Canadian stakeholders in U.S. Steel contend that public disclosure of the settlement is important for all concerned with the future viability of Stelco. They contend the settlement must be made public as part of the effort to expose the fraud of U.S. Steel putting its Canadian subsidiary under bankruptcy protection of the CCAA. Stakeholders are fighting to oppose U.S. Steel's liquidation of Stelco's production capacity and its ability to produce value for the country, communities and all those who rely on steel production for their livelihoods and pensions.

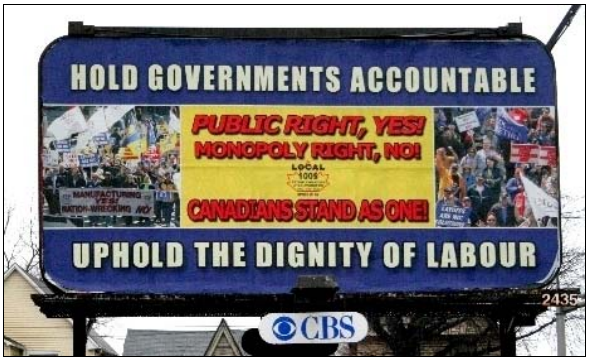
The Superior Court Justice Herman Wilton-Siegel in charge of the CCAA case, in his May 19 decision, agreed that public disclosure is necessary but that he lacks the authority to order the two parties to comply. In a very brief hearing on October 26, the Ontario Court of Appeal agreed to an expedited hearing on November 19, to hear objections to Justice Wilton-Siegel's ruling and whether it should be overturned.

Outside the courtroom after the October 26 hearing, the President of Local 1005 USW Gary Howe said several issues are important for Canadians to consider. One issue for Canadians to think about is whether Canada should have a viable steel industry or not. Howe said in the opinion of Local 1005 and its many allies that Canada, and any modern country for that matter, needs a steel industry and government measures should be taken to ensure stable steel prices and production.

The value of fixed assets of a steel industry is extremely large, he explained. To shut those assets down and then decide in the future to restart them requires great funds and efforts. The decision should not be taken lightly, as it concerns nation-building.

The issue being addressed regarding public disclosure of the settlement agreement is whether U.S. Steel should have been allowed to buy Stelco in the first place, whether it was ever serious about its commitments to sustain Stelco or had something else in mind.

Another issue Howe raised is the one of accountability not only to continued steel production but also to the retirees who have given their productive lives to Stelco. Somebody has to be held to account for the situation the retirees have been put into, he said. They worked for decades producing high quality steel under hazardous conditions only to have their security in retirement taken from them. Someone has to be held to account.



Also to consider, Howe said, is the issue of future jobs. A steel industry not only generates direct employment but also sustains many indirect jobs. Workers who have produced the steel for much of their lives have to be considered a priority as they have much to offer the Canadian economy. In addition, a viable steel industry and manufacturing generally offer futures for our young people who want to participate in production.

The Prosecution of U.S. Steel for Crimes in the U.S.

U.S. Steel and several other global steel monopolies have pleaded no contest to an anti-trust suit and have been forced to pay millions of dollars in fines to the plaintiffs. The total fine of $103,930,547.36 that U.S. Steel and others must pay and the *pro rata* amount each recipient will receive has been settled in a U.S. court.

The prosecution of U.S. Steel for crimes in the U.S. stands in sharp contrast with the present situation in Canada. Here, U.S. Steel is using the Ontario Superior Court and the *Companies' Creditors Arrangement Act* (CCAA) to attack further those who have already suffered. Instead of a criminal standing in the dock accused by those it has harmed, the victims are forced to suffer even greater abuse within CCAA court proceedings that U.S. Steel and its flunkies control and direct.

Unlike other court cases, the CCAA process hears no evidence of the crimes of an accused. The actual actions of an accused are not presented and judged according to accepted practices of law. Instead, a powerful entity is allowed to fabricate a story to serve its narrow private interests and turn the tables on its victims, forcing them to respond to the fanciful story and pay for the crimes of the storyteller.

The people are fed up with this abuse of the court system. The antics of U.S. Steel within the CCAA bring the entire justice system into disrepute as a tool of the global rich and the monopolies they own and control. The federal and Ontario governments must intervene immediately with a pro-social alternative, halt this abuse of power and hold U.S. Steel to account for its crimes against Canada and the people as a U.S. court is doing in the United States.

Ruling in Anti-Trust Suit Versus U.S. Steel et Al

James B. Zagel, United States District Judge (Illinois) has rendered a Memorandum Opinion and Order in the anti-trust suit against U.S. Steel. (Excerpts)

Almost one year ago, in October 2014, I granted final approval to the Settlements with Defendants

CMC, Gerdau, AK Steel, ArcelorMittal and U.S. Steel.... The Notice and Claims process is now complete, and the Claims Administrator is prepared to distribute the net Settlement Funds to the Class, on approval by the Court. The current, total available balance of the Settlement Funds is $103,930,547.36.

Presently before me is Plaintiffs' motion for distribution of these settlement funds. In this motion, Plaintiffs outline the Notice and Claims process and request that I approve: (a) the procedures used, the actions taken, and the determinations made by the Claims Administrator. [...]

I approve the distribution recommendations set forth in the Cirami Declaration and Exhibit E thereto, as well as the proposed methodology for determining payment amounts for Claimants. [...]

GCG reports that as of August 31, 2015, the available balances of the Settlement Funds total $103,930,547.36. [...]

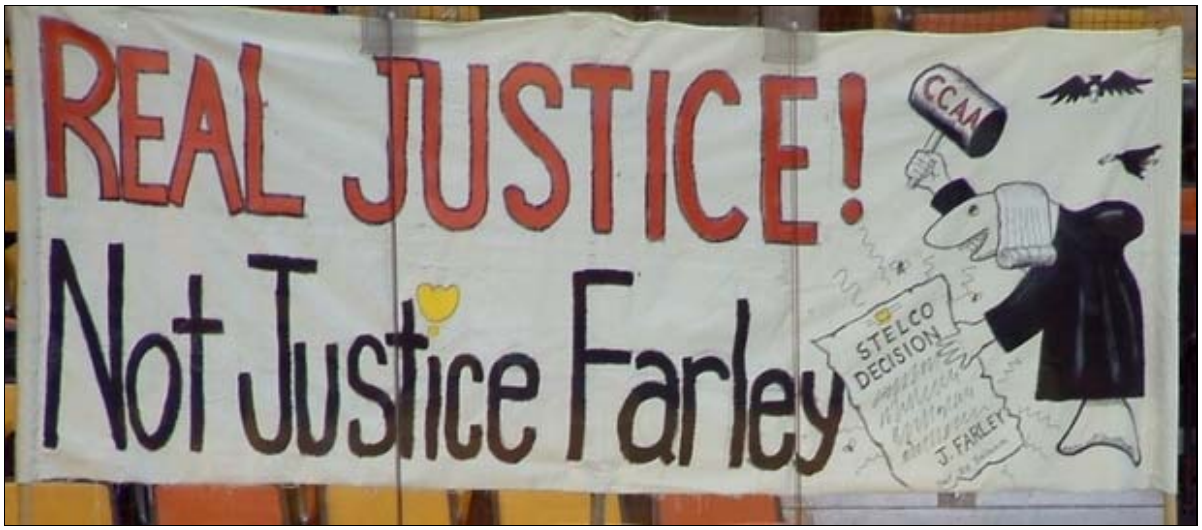
GCG is directed to distribute the monies in the Distribution Fund to the approved Claimants ... as soon as practicable. [...]

The claims process in this case has been thorough, straightforward and fair. It seems clear to me that every class member's claim has been evaluated pursuant to the same process and under the same standards. Accordingly, I am granting Plaintiffs' motion. Plaintiffs may retain $250,000 in the Settlement Funds to cover their estimated future expenses described above and transfer $103,680,547.36 into a new Distribution account, for distribution to Class Members. GCG may prepare and mail checks to all Approved Claimants for their pro rata shares of the Settlement Funds as set forth in Plaintiffs' motion.

James B. Zagel
United States District Judge
DATE: October 19, 2015

Arbitrary Justice Is No Justice at All

- K.C. Adams -



Prior example of arbitrary justice -- Justice Farley's ruling in Stelco's CCAA that attacked the workers.

U.S. Steel's Canadian subsidiary is now under bankruptcy protection of the *Companies' Creditors Arrangement Act* (CCAA). Canadians have long characterized the CCAA as a forum of injustice, where might makes right. The CCAA is designed to give a veneer of legality to monopoly right and its attacks on public right. Rather than rule of law, the CCAA is a Wild West Show where actions are not judged according to their conformity with accepted business practice and law but rather to advance the private interests and monopoly right of those in control of the Show.

The current CCAA process involving the supposed bankruptcy of U.S. Steel in Canada follows a similar pattern to other CCAA cases. Arbitrariness in favour of certain private interests is sanctioned under the concocted aim of those in control of the CCAA process. Those currently in control have all been put there by the executive managers of U.S. Steel (USS). They include William Aziz the Chief Restructuring Officer (CRO), the CCAA Monitor, the executive managers and directors of USSC (the Canadian subsidiary so named by USS and supposedly in need of bankruptcy protection), its Financial Advisor and Brookfield Capital Partners, the debtors-in-possession.

Justice H. Wilton-Siegel, the Ontario Superior Court judge presiding over the USS case says the general aim and purpose of the CCAA is, "to further the prospects of a viable plan of arrangement that will restructure the debtor company or its business in a manner that will allow continued operation of the business."

(All quotations from the October 14, 2015 complete ruling of Justice Wilton-Siegel sanctioning the destructive "Business Preservation Plan" and its anti-social "Cash Conservation Measures" that U.S. Steel is imposing on Stelco and its stakeholders and creditors.)

In this particular case, the debtor company, "USSC is an indirect wholly-owned subsidiary of United States Steel Corporation ('USS'). USS acquired USSC in October 2007." The "indirect wholly-owned subsidiary" has been put into bankruptcy protection by its foreign owner. One wonders how a direct wholly-owned subsidiary would differ in substance from U.S. Steel's indirect ownership. In any case, the indirect owner wants to avoid losing all or part of its investment in Stelco's fixed assets to stakeholders and creditors or competitors. To accomplish this aim, the owner USS has declared itself the principal and foremost creditor, which is a highly unusual position for an owner in need of bankruptcy protection, indirect or otherwise. USS has put its own people in control of its CCAA bankruptcy process and is running it to crush any real stakeholders and creditors and any pro-social alternative for Stelco.

The aim of putting USSC into CCAA is not to deprive its sole owners in the U.S. of their investment. The aim of the U.S. owners, which they have made the aim of this bankruptcy protection, is to deprive any real stakeholders and creditors of their rights and claims, liquidate the fixed assets of USSC, escape back to the U.S. with as much of their initial investment as they can, and prevent any pro-social alternative for Stelco that would serve the people, Canadian economy and nation-building. This particular aim may or may not be in contradiction with the general aim of the CCAA as explained by Justice Wilton-Siegel but that seems to be of no consequence for this is the Wild West.

USS has formulated its particular CCAA aim of not losing its over $2 billion investment, as a "Business Preservation Plan." The "Business Preservation Plan" would be better characterized as a "Business Liquidation Plan," as it contains a clear march towards destruction of USSC within a short period.

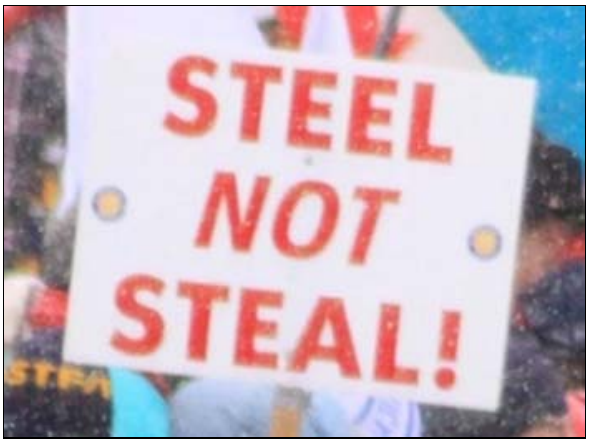
So, the "Business Preservation Plan" foresees 12 to 15 more months of existence at "a significantly reduced level" and then both mills will be "idled." The reduced level of production is

almost wholly a consequence of USS moving 40 per cent of USSC current production to plants in the United States. The Justice refers to this aspect of the "Business Preservation Plan" as the "Diversion Decision."

"USSC estimates that the Diversion Decision will result in a loss of approximately $40 million and $8 million of EBITDA in the fourth quarter of 2015."

"USS also notified the parties that ... it proposed to refrain from submitting any customer bids in the current round of negotiations with the OEM (Original Equipment Manufacturers) purchasers that would contemplate any allocation of automotive-related steel production to USSC."

"In this context, given the present circumstances, USS considers USSC's production capacity in 2016 to be uncertain."



USS is stealing Stelco's most lucrative customers depriving it of 40 per cent of its gross income. The Business Preservation Plan guarantees that Stelco has no positive cash flow. As well, USS refuses to plough any revenue back into the fixed assets such as the Lake Erie Works' blast furnace reline. Any company to survive must constantly put realized added-value back into the fixed assets or they will become exhausted, atrophy and die. But death of the fixed assets is of no concern to U.S. Steel whose concern is to destroy Stelco as a competitor and escape from the battle as unscathed as possible.

The diversion of Stelco production to USS plants in the U.S. is not new as USS admits in the Diversion Decision. U.S. Steel says that it has deliberately weakened production at Stelco over the course of its ownership in contravention of agreements with the Canadian governments and in public announcements and promises.

To escape from Canada with as little loss as possible resulting from its liquidation of Stelco, USS hastily created a separate shell for its wholly-owned Canadian subsidiary and put it into CCAA bankruptcy protection under its control. Within the CCAA, U.S. Steel concocted a Business Preservation Plan for USSC that restricts its production and income, and guarantees its destruction. To compensate for the loss of Stelco income under the Plan, and to appear as if it is concerned for the survival of USSC and "allow continued operation of the business," USS has called for "Cash Conservation Measures" that directly attack workers, retirees, suppliers, contractors and even various levels of government.

Justice Wilton-Siegel says the Business Preservation Plan and Cash Conservation Measures are consistent with the aim of the CCAA "to restructure the debtor company (USSC) or its business in a manner that will allow continued operation of the business." The contorted pragmatic logic of the end justifies the means is extended from the aim of the CCAA to the Business Preservation Plan and on to the Cash Conservation Measures, which are necessary to sustain USSC as a result of its loss of income under the Plan.

"The Business Preservation Plan includes a number of cash conservation measures reflected in the Business Preservation Order that the board of directors of USSC believes are necessary to enable USSC to maintain sufficient liquidity and continued access to DIP financing in order to continue operations."

The supposed aim to save USSC, which is under a direct destructive attack from its U.S. owners, compels the violent means that tumble one after another onto the backs of retirees, steelworkers, salaried employees, the fixed assets, surrounding communities and governments.

Those in control of the Wild West Show define the end and give their end a hallowed term "paramountcy." Any measure to achieve paramountcy is sanctioned. In this way, the end or paramountcy allows those in control to deprive the people of their rights and wreck valuable productive facilities. In fact, monopoly right becomes the end or paramountcy and the application of monopoly right to suppress public right is given an air of righteousness.

The Justice describes the downward slide under the rule of monopoly right when he writes, "I would add that, insofar as the relief sought (under the cash conservation measures) would conflict with provincial pension or municipal tax legislation, the Principle of paramountcy is properly engaged to avoid a bankruptcy scenario. While it is tempting to consider withholding approval for one or more measures in light of their impact on particularly vulnerable persons who have the sympathy of the Court, in particular the retirees who rely on the OPEBs [Other Post-Employment Benefits], the issue before the Court is approval or rejection of the Business Preservation Plan as an entirety."

The Judge presents himself as sympathetic to the plight of the people, "particularly vulnerable persons who have the sympathy of the Court," but he is caught within the monopoly right and degenerate pragmatism of the ruling capitalist elite. The greater end or paramountcy of the CCAA, as articulated by the gang representing the private interests of USS, has to be enforced with means to achieve the end even though this justifies injustice against "vulnerable persons." Justice Wilton-Siegel must agree to deprive the people of their rights, including 20,200 Stelco retirees, but he does shed some crocodile tears for having been forced to do so.

What kind of legal proceeding is this that sanctions such injustice? The attacks on people's rights are justified because the entire arbitrary scenario has been concocted and manipulated to favour the private interests and monopoly right of U.S. Steel. It is a fraud. A Wild West Show allows whatever wretched plan those in control of the process have up their sleeves. As experience has shown with the previous Stelco stint in CCAA and that of Nortel and many others, for the people affected to try to find an "arrangement" within the process is impossible, as the end justifies the means however evil those means may be. The process is completely subservient to the private interests, monopoly right and pragmatism of those in control. This CCAA justice is no justice at all. It is arbitrary, directly serves monopoly right and has no place in modern Canada. Both the Ontario and federal governments should intervene immediately, put an end to this farce, take control of the situation and implement a plan to make Stelco a public going concern that favours the people, upholds public right and the rights of all, and meets all its social responsibilities to the people, economy and nation-building.

For Your Information

U.S. Anti-Trust Ruling Against U.S. Steel et Al

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION STANDARD IRON WORKS, on behalf of itself and all others similarly situated,

Plaintiffs,

v.

ARCELORMITTAL; ARCELORMITTAL USA, INC.; UNITED STATES STEEL CORPORATION; NUCOR CORPORATION; GERDAU AMERISTEEL CORPORATION; STEEL DYNAMICS, INC.; AK STEEL HOLDING CORPORATION; SSAB SWEDISH

STEEL CORPORATION; COMMERCIAL METALS, INC.,

Defendants.

No. 08 C 5214

Judge James B. Zagel

MEMORANDUM OPINION AND ORDER

Almost one year ago, in October 2014, I granted final approval to the Settlements with Defendants CMC, Gerdau, AK Steel, ArcelorMittal and U.S. Steel. I also approved Plaintiffs' proposed Plan of Allocation and Class Counsel's request for payment of attorneys' fees and reimbursement of litigation expenses. The Notice and Claims process is now complete, and the Claims Administrator is prepared to distribute the net Settlement Funds to the Class, on approval by the Court. The current, total available balance of the Settlement Funds is $103,930,547.36.

Presently before me is Plaintiffs' motion for distribution of these settlement funds. In this motion, Plaintiffs outline the Notice and Claims process and request that I approve: (a) the procedures used, the actions taken, and the determinations made by the Claims Administrator, Garden City Group ("GCG"), and by the undersigned Class Counsel relating to the administration of, and proposed distributions from, five settlement funds established in accordance with Settlement Agreements approved by this Court, including the administrative determinations of the Claims Administrator and Class Counsel in accepting, revising, and rejecting Claims in connection therewith; (b) payment of certain invoices associated with claims administration; and (c) distribution of settlement funds to approved Claimants.

Four claimants, however, do not accept the determinations of the claims administrator and have filed objections to Plaintiffs' motion. After carefully considering these objections, I am overruling them and granting Plaintiffs' motion in its entirety.

DISCUSSION

The distribution of a settlement fund must be "fair, reasonable, and adequate." *Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 589 (N.D. Ill. 2011). As I consider the four objections that have been filed in this case, I must also keep in mind the interests of the numerous (here, nearly 2,000) absent class members who have an interest in the fair allocation of the settlement fund. See *Zients v. LaMorte*, 459 F.2d 628, 630 (2d Cir. 1972) ("a court supervising the distribution of a [settlement] fund has the inherent power and duty to protect unnamed, but interested persons").

The first two objections -- made by IPSCO Tubular, Inc. and Newport Steel (the "IPSCO Entities") -- present nearly identical issues that are largely resolved by the plain terms of the class definition. It has been very clear since the outset of this case that the class does not include Defendants' affiliates (present or former). Both of the IPSCO Entities, however, were subsidiaries of co-conspirator IPSCO during the conspiracy period until July 2007, when IPSCO was acquired by Defendant SSAB. In fact, Plaintiffs' allegations against SSAB stem in large part from conspiratorial conduct by its predecessor IPSCO. The IPSCO Entities, therefore, are not members

of the class and, as such, they are expressly excluded from the class defined by this Court. An "individual who is not a class member lacks standing to object to a settlement agreement to which he is not a party." *Kaplan v. Houlihan Smith & Co.*, No. 12 C 5134, 2014 WL 2808801, at *3 (N.D. Ill. June 20, 2014); *In re Oil Spill by Oil Rig Deepwater Horizon in Gulf of Mexico*, 910 F. Supp. 2d 891, 941 (E.D. La. 2012) ("Plaintiffs falling outside the settlement class are entirely unaffected by the Settlement, and thus lack standing to challenge it."), aff'd sub nom. *In re Deepwater Horizon*, 739 F.3d 790 (5th Cir. 2014).

Unlike the objections made by the IPSCO Entities, the other two objections originate from class members. Both General Motors ("GM") and Electrolux argue that their own data supports greater purchase amounts than those contained in Defendants' records. Although they have been given many opportunities over many months to substantiate their claims, both have failed to do so. As a result, the class administrator has approved GM's and Electrolux's claims for the amounts contained in Defendants' records, and rejected their disputes. I find that the claims administrator's decisions here were reasonable, and indeed the only reasonable ones that could have been reached on the record before it. I am therefore overruling the objections made by GM and Electrolux.

Specifically, I am granting Plaintiffs' motion because I find that the procedures used, actions taken, and determinations made by GCG and Plaintiffs' Class Counsel for the administration of the CMC, Gerdau, AK Steel, ArcelorMittal and U.S. Steel Settlements were proper and complete, and I approve the administrative determinations of GCG and Class Counsel accepting, modifying, and rejecting Claims filed in this matter.

I have carefully reviewed Plaintiffs' motion and the Declaration of Stephen J. Cirami in support thereof, including the exhibits thereto, as well as all of the objections discussed above. After doing so, I approve the distribution recommendations set forth in the Cirami Declaration and Exhibit E thereto, as well as the proposed methodology for determining payment amounts for Claimants. Accordingly, the Claims listed in Exhibits E-1 and E-2 to the Cirami Declaration are approved, as are the Approved Purchase Amounts and Proposed Payment Amounts for each Claim. I find that the Proposed Payment Amount, calculated to pay each approved Claim on a *pro rata* basis, based on Approved Purchase Amounts, complies with the Plan of Allocation previously approved by the Court. I also approve GCG's and Class Counsel's recommendation of a $100 minimum payment to all eligible Class Members, calculated as described in the Cirami Declaration. The Claims listed in Exhibits E-3 and E-4 to the Cirami Declaration are rejected for the reasons set forth therein and shall not receive a distribution from the Settlement Funds.

I also find that the fees and expenses in the amount of $332,969.11 invoiced by GCG were reasonable and necessary in connection with the administration of the Settlements.

GCG reports that as of August 31, 2015, the available balances of the Settlement Funds total $103,930,547.36. GCG and Class Counsel request a reserve of $250,000.00 for reasonable, anticipated further expenses, including GCG's fees and expenses to prepare its report, conduct the Distribution, provide notice of the recent certification of the litigation class, and address contingencies such as paying any taxes due on interest earned by the Settlement Funds, and funding any unanticipated costs. I am approving this request because it is reasonable and advisable.

The current balances of the Settlement Funds, minus $250,000.00 reserved for the purposes described above, shall be transferred into a single Distribution Fund forthwith. GCG is directed to distribute the monies in the Distribution Fund to the approved Claimants, in the approved amounts, listed in Exhibits E-1 and E-2 of the Cirami Declaration and approved by this Court, as soon as practicable.

Checks for distribution to the approved Claimants shall bear the notation "Void and Subject to Re-Distribution if Not Cashed within 90 Days After Issue Date," and no check shall be negotiated in the Distribution Fund more than 120 days after the date of the check. Any Claims, or requests for adjustments to Claims, filed after September 24, 2015, shall not be considered and shall not be eligible for payment from the Settlement Funds beyond the amounts approved herein.

CONCLUSION

The claims process in this case has been thorough, straightforward and fair. It seems clear to me that every class member's claim has been evaluated pursuant to the same process and under the same standards. Accordingly, I am granting Plaintiffs' motion.

Plaintiffs may retain $250,000 in the Settlement Funds to cover their estimated future expenses described above and transfer $103,680,547.36 into a new Distribution Account, for distribution to Class Members. GCG may prepare and mail checks to all Approved Claimants for their pro rata shares of the Settlement Funds as set forth in Plaintiffs' motion.

ENTER:

James B. Zagel
United States District Judge
DATE: October 19, 2015