

## DISTRIBUTION MEMO

### WARN ACT SETTLEMENT CLASS

1. As required by the Order, Class Counsel caused the establishment of a Qualified Settlement Fund ("Settlement Fund") as a common fund on behalf of the Class pursuant to Section 468B of the Internal Revenue Code of 1986, as amended and the regulations promulgated thereunder. Sprenger & Lang PLLC was appointed as Administrator of the Settlement Fund, and Rust Consulting, Inc., which is highly experienced in claims administration, (*see* [www.rustconsulting.com](http://www.rustconsulting.com)), managed the day-to-day administration of the Settlement Fund and executed the distribution.

2. The Settlement established the following allowed claims, which resulted in total payments of **\$576,784.16** to the Settlement Fund: (1) an allowed first priority administrative claim of \$10,853 on the NT/NA Estate, with a resulting payment of **\$10,853.00** received on December 29, 2004; (2) an allowed § 507(a)(3) priority claim of \$571,933 on the NT/NA Estate, with a resulting payment of **\$287,051.70** received on December 29, 2004; (3) an allowed unsecured non-priority claim of \$700,000 on the NT/NA SPM Fund, with a resulting payment of **\$29,610.00** received on October 5, 2005; (4) an allowed § 507(a)(3) priority claim on the CML Estate of \$571,933 less the amount paid from the NT/NA Estate Funds, with a resulting payment of **\$225,000.00** received in October 2002; and (5) an allowed unsecured non-priority claim of \$155,528 on the CML SPM Fund, with a resulting payment of **\$24,269.46** received on December 27, 2002.

## FORMULA

3. Pursuant to the Settlement Agreement, the amount available for distribution to Class Members (“Distribution Amount”) consisted of the amounts paid to the Settlement Fund, plus interest accrued, minus the following:

- Class Counsel's attorneys' fees in the amount of 33 1/3 % of the payments paid to the Settlement Fund;
- any and all costs incurred by the WARN Act Class in litigating this matter and incurred by the Administrator in administering the Settlement Fund; and
- any and all indemnity claims for which the Settlement Fund is liable pursuant to paragraph 17 in the Agreement or other amounts for which the Settlement Fund is or becomes otherwise liable.

4. The Settlement further provides that the payments to the Class Members shall be treated as backpay and that the employer and employee portion of any FICA or other wage-related tax shall be withheld and thereby paid from the Settlement Fund as well. Settlement Agreement at 15-16.<sup>1</sup>

5. Pursuant to the Settlement, all interest and earnings of the assets of the Settlement Fund accumulated and became part of the Settlement Fund, and all taxes on any interest or other income earned by the Settlement Fund were borne by it. Settlement Agreement at 14-15. For purposes of demonstrating the formula to be used, Class Counsel shall use the amount paid to the Settlement Fund: **\$576,784**, with the understanding that all interest less taxes on that interest (“interest”) was included in the final amount for distribution.

6. The attorneys' fees of \$192,242.11 were 33 1/3% of **\$576,784**, the amounts paid to the Settlement Fund.

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<sup>1</sup> Class Members to whom a distribution is made received a W-2 form for the backpay award, thereby entitling them to any refunds available under the law.

7. The litigation and administrative costs prior to the final distribution were \$63,980.35.

8. **Calculation of Net Distribution Amount:**

amounts paid to Settlement Fund	<b>\$576,784.00 + interest - taxes</b>
minus attorneys' fees of 33 1/3%	<b>- 192,242.11</b>
minus litigation/administration costs	<b>- 63,980.35 + distribution costs</b>
minus employer FICA and other taxes	
<b>equals Net Distribution Amount</b>	

9. Pursuant to the Settlement, the Net Distribution Amount consisted of four pools of money, each with its own distribution formula. The funds described in ¶ 4 of the Settlement are identified below as Pool A; the funds described in ¶¶ 5 and 7 of the Settlement are identified below as Pool B; the funds described in ¶ 6 of the Settlement are identified below as Pool C, and; the funds described in ¶ 8 of the Settlement are identified below as Pool D. Because of the deduction of attorneys' fees and costs, as well as the addition of interest and the deduction of taxes on the Fund and employer FICA and other taxes, the amount in each pool was determined pro rata based on the proportion of the original payment for each pool to the total sum of payments to the Settlement Fund as shown in the table below:

<b>Pool</b>	<b>Settlement Paragraphs Describing Pool</b>	<b>Amount Paid to Settlement Fund</b>	<b>Pro Rata Proportion of Settlement Fund (amount divided by \$576,784.00)</b>
A	¶ 4 (Ex. A at 11)	\$ 10,853.00	1.88%
B	¶¶ 5, 7 (Ex. A at 11-12)	\$ 512,051.70	88.78%
C	¶ 6 (Ex. A at 11-12)	\$ 29,610.00	5.14%
D	¶ 8 (Ex. A at 12)	\$ 24,269.46	4.20%
	<b>TOTAL</b>	<b>\$ 576,784.00</b>	<b>100.00%</b>

10. **Pool A Formula** (Settlement Agreement at 11, ¶ 4): Pool A provided payment for allowed § 507(a)(1) first priority administrative claims of eight Warn Act Class members terminated post-petition who filed NT/NA administrative proofs of claim totaling \$21,706. The amounts of the first priority administrative claims of each of the eight individuals determined their pro rata portion of this pool, which is 1.88% of the Distribution Amount. The following formula was used for this distribution:

**[amount of allowed individual § 507(a)(1) claim] divided by [total sum of allowed individual § 507(a)(1) claims] = [% of allocation from Pool A]**

**[% of allocation from Pool A] times [1.88% of Distribution Amount] = [individual distribution from Pool A]**

11. **Pool B Formula:** (Settlement Agreement at 11-12, ¶¶ 5, 17): Pool B provided payment for allowed § 507(a)(3) priority claims of the 136 Class Members up to a maximum of \$4,300.00. Class Members received pro rata amounts from this pool, which is 88.78% of the Distribution Amount, based on their total proof of claim amount up to a maximum of \$4,300, minus wages received for post-petition work if applicable. The following formula was used for this distribution:

**[Total damages from individual Class Member's proof of claim form to a maximum of \$4,300] minus [post-petition wages paid, if applicable] divided by [total sum of individual damages to a maximum of \$4,300 per person for Class Members] = [% of allocation from Pool B]**

**[% of allocation from Pool B] times [88.78% of Distribution Amount] = [distribution from Pool B]**

All of the 136 Class Members have § 507(a)(3) priority claims. Almost all (130) Class Members made proofs of claim for damages in excess of \$4,300, giving them a claim of \$4,300 on Pool B minus post-petition wages paid. The remaining six Class Members made proofs of claim for damages less than \$4,300. Their claims on Pool B were the amounts of their total damages less post-petition wages paid.

12. **Pool C Formula** (Settlement Agreement at 11-12, ¶ 6): Pool C provides payment for an allowed unsecured claim for Class Members who filed proofs of claims with damages that exceed what they received as priority claims even when all claimed WARN Act damages, which were disputed by the Debtors, were excluded from their proof of claim total amounts. Class Members who had claim amounts remaining after the deduction of all WARN Act damages from their proofs of claims and after the deduction of any Pool A and B distribution amounts received a pro rata share of this pool, which is 5.14% of the Distribution Amount. The formula for this distribution is as follows:

**[Total damages from individual Class Member's proof of claim form] minus [WARN Act damages] minus [any payments from Pools A and B] divided by [Total sum of damages from all Class Members' proofs of claim minus WARN Act Damages minus any payments from Pools A and B] = [% of allocation from Pool C]**

**[% of allocation from Pool C] times [5.14 % of Distribution Amount] = [distribution from Pool C]**

13. **Pool D Formula** (Settlement Agreement at 12, ¶ 8): Pool D, which is 4.20% of the Distribution Amount, provided payment for an allowed unsecured non-priority claim of one

