

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

KIMBERLY COLE, <i>et al.</i> , on behalf of themselves and all others similarly situated,	:	Civil Action No. 3:13-cv-07871-FLW-TJB
	:	
<i>Plaintiffs,</i>	:	
	:	
v.	:	
	:	
NIBCO, Inc.,	:	
	:	
<i>Defendant.</i>	:	

**DECLARATION OF SHANON J. CARSON IN SUPPORT OF PLAINTIFFS’  
MOTION FOR PRELIMINARY SETTLEMENT APPROVAL AND RELATED RELIEF**

I, Shanon J. Carson, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct:

1. I am a member in good standing of the bar of the Commonwealth of Pennsylvania, and I am admitted to the United States District Court for the Eastern District of Pennsylvania and other District Courts throughout the country. I respectfully submit this Declaration in support of Plaintiffs’ Motion for Preliminary Settlement Approval and Related Relief. The following is based on my personal knowledge, and if called upon to do so, I could and would competently testify thereto.

2. I am a Managing Shareholder of Berger Montague PC (“Berger Montague” or the “Firm”) and one of the two proposed Co-Lead Class Counsel for Plaintiffs and the Settlement Class in the above-captioned litigation.

3. Berger Montague specializes in class action litigation in federal and state courts and is one of the preeminent class action law firms in the United States. I have attached a copy of

our Firm's resume hereto as Exhibit 1. Berger Montague currently consists of over 60 attorneys who primarily represent plaintiffs in complex civil litigation and class action litigation in federal and state courts. Berger Montague has played lead roles in major class action cases for 48 years, and has obtained settlement and recoveries totaling over \$30 billion for our clients and the classes they have represented.

4. Our Firm's Consumer Protection Group protects consumers' rights when they are injured by false or misleading advertising, defective products, and various other unfair trade practices. I Co-Chair the Consumer Protection Department at Berger Montague, and our Firm has an extensive background in litigation (including class action litigation), on behalf of consumers. I currently serve as lead or co-lead counsel in many class and collective action cases in federal courts across the country. This level of experience has enabled Berger Montague to undertake this matter and to efficiently and successfully prosecute and settle the claims of the Settlement Class.

5. Berger Montague has served as lead counsel and/or on steering committees of multiple nationwide product defect class actions. For example, I was appointed and served as Co-Lead Counsel in *In re: CertainTeed Fiber Cement Siding Litigation*, MDL Docket No. 2270 (E.D. Pa.), where a cash settlement of \$103.9 million was reached in this MDL product liability litigation concerning CertainTeed Corporation's fiber cement siding, on behalf of a nationwide class. Berger Montague also served as Co-Lead Counsel in *George, et al. v. Uponor Corporation, et al.*, No. 12-cv-249 (D. Minn.), a case concerning Uponor's brass PEX plumbing fittings, a product similar to one of the Covered Products in this litigation. The parties in the *George* case reached a settlement wherein Uponor guaranteed funding of up to \$21 million for the reimbursement of repair and replacement costs related to leaks or flow issues caused by the Uponor products at issue.

6. I have achieved the highest peer-review rating, "AV," in Martindale Hubbell, and

have repeatedly been singled out for honors and awards by numerous publications. For example, in 2015, 2016, 2017, and 2018, I was selected as one of the top 100 attorneys in Pennsylvania, as reported by Thomson Reuters. I concentrate my practice on the prosecution of class actions on behalf of consumers and employees across the country.

7. In addition to the cases listed above, I have served as lead or co-lead counsel in dozens of successful class action cases in federal courts across the country, including, for example:

- a. *Jantz v. Social Security Administration*, EEOC Case No. 531-2006- 00276X. Co-Lead Counsel. I served as Co-Lead Counsel in this nationwide class action alleging that the Social Security Administration discriminated against its employees with targeted disabilities. On October 8, 2008, the EEOC certified a nationwide litigation class of employees of the Social Security Administration who have severe disabilities and who have alleged discrimination with respect to promotions for which they were deemed to be qualified. We subsequently obtained a cash, non-reversionary class action settlement of \$9,980,000 plus significant injunctive relief.
- b. *Employees Committed for Justice v. Eastman Kodak Company*, No. 6:04-cv-06098 (W.D.N.Y.). Co-Lead Counsel. As Co-Lead Counsel, I obtained a settlement of \$21.4 million on behalf of a nationwide class of African American employees of Kodak alleging a pattern and practice of racial discrimination.

I have also served and been appointed as lead or co-lead counsel in numerous other types of class actions throughout the country that have achieved many millions of dollars in settlements on behalf of my clients and the classes they have represented.

8. Lawrence Deutsch is a Shareholder of Berger Montague who has worked on this case with me since its inception. Mr. Deutsch focuses his practice primarily on consumer protection and shareholder class actions and has served as lead or co-lead counsel for the class in a many significant class actions, including the *George v. Uponor* PEX plumbing fittings case described above. He was the recipient of judicial praise in *Ginsburg v. Philadelphia Stock Exchange*, No. 2202-CC (Del. Ch.), as Chancellor Chandler, when approving the settlement allocation and fee awards on July 2, 2008, stated, “Counsel, again, I want to thank you for your extraordinary efforts in obtaining this result for the class.” The Chancellor had previously

described the intensity of the litigation when he had approved the settlement, “All I can tell you, from someone who has only been doing this for roughly 22 years, is that I have yet to see a more fiercely and intensely litigated case than this case. Never in 22 years have I seen counsel going at it, hammer and tong like they have gone at it in this case.”

9. Jacob Polakoff is a Senior Associate at Berger Montague who has worked on this case since its inception. Mr. Polakoff has concentrated his practice on the prosecution of class actions and other complex litigation, including the representation of plaintiffs in consumer protection, securities and commercial cases. He currently represents homeowners throughout the country in various product liability actions concerning defective construction products, including roofing and plumbing cases. He served on the team of co-lead counsel in *George v. Uponor*. Mr. Polakoff was selected as a Pennsylvania Super Lawyer – Rising Star in 2010 and 2013-2018, an honor conferred upon only the top 2.5% of attorneys in Pennsylvania who are 40 or younger.

10. Berger Montague started investigating a potential class action lawsuit against NIBCO concerning the NIBCO’s PEX Tubing, Fittings, and Clamps in early 2014. After extensive investigation, and client interviews and analysis, the Firm, on behalf of its clients, filed the *Meadow, et al. v. NIBCO Inc.*, No. 15-cv-01124 case on October 26, 2015 in the United States District Court for the Middle District of Tennessee (“*Meadow*”). *Meadow* Dkt. 1.

11. Berger Montague attorneys represented the Plaintiffs at the *Meadow* Rule 16 Initial Case Management Conference before Magistrate Judge Barbara D. Holmes on January 19, 2016.

12. On January 11, 2016, NIBCO filed a motion to partially dismiss the *Meadow* case. *Meadow* Dkt. 31. The Firm prepared and filed Plaintiffs’ memorandum of law in opposition to the motion to dismiss on February 25, 2016, *Meadow* Dkt. 55, and Lawrence Deutsch of Berger Montage presented oral argument in opposition to the motion to District Judge Todd J. Campbell

on May 11, 2016.

13. NIBCO's motion to dismiss was largely denied on May 24, 2016, *Meadow* Dkts. 62-63, and Berger Montague filed an Amended Complaint consistent with the *Meadow* Court's motion to dismiss order on June 15, 2016. *Meadow* Dkt. 67. NIBCO answered the Amended Complaint on July 6, 2016. *Meadow* Dkt. 72.

14. On August 17, 2016, Lawrence Deutsch, Jacob Polakoff and I had a face-to-face settlement conference with counsel for NIBCO. The conference did not result in the resolution of the *Meadow* action. *See Meadow* Dkt. 73.

15. My Firm served NIBCO with twenty-one (21) interrogatories and thirty-one (31) requests for production of documents, and met-and-conferred with NIBCO concerning NIBCO's responses to the interrogatories and document requests. We also subpoenaed multiple third parties for their documents relevant to the allegations in *Meadow*.

16. Berger Montague produced a complete set of documents on behalf of the *Meadow* Plaintiffs in response to NIBCO's forty-six (46) requests for production of documents, and assisted the *Meadow* Plaintiffs in responding to twenty-two (22) interrogatories served by NIBCO.

17. Plaintiffs' counsel in the *Meadow* and *Cole* cases agreed to coordinate all discovery in the two cases to avoid duplication of effort and to minimize expense. The firms in the two cases proceeded to work closely together and cooperated and coordinated on all case matters and in negotiating the settlement to achieve the class-wide result here.

18. Plaintiffs' counsel reviewed the over one-hundred sixty-five thousand (165,000) pages of documents produced by NIBCO and approximately ten thousand (10,000) pages of documents produced by third parties.

19. Berger Montague defended the depositions of Plaintiffs Chad Meadow in

Nashville, Tennessee, Susan Plisko in Charlotte, North Carolina, and Kenneth McLaughlin in Pensacola, Florida, respectively; and, along with other counsel in the *Meadow* case, deposed or assisted in deposing nine (9) NIBCO employees and former employees throughout the United States; deposed NIBCO's manufacturer's representative, Sunbelt Marketing, Inc. in Atlanta, Georgia; and assisted with the deposition of Jana Corporation in Toronto, Canada.

20. Berger Montague attorneys attended NIBCO's inspections of Mr. Meadow's home in Murfreesboro, Tennessee, the Pliskos' home in Clover, South Carolina, and Mr. McLaughlin's home in Mobile, Alabama.

21. My Firm, and other counsel in the *Meadow* case, worked closely with Plaintiffs' experts and took, defended and/or prepared for and assisted with the depositions of all experts in the litigation.

22. Berger Montague attorneys prepared and filed on June 8, 2017, Plaintiffs' motion for class certification, along with forty-one (41) exhibits, in *Meadow*. *Meadow* Dkt. 101. Following NIBCO's opposition to the motion, Berger Montague attorneys prepared and filed a reply memorandum in further support of the motion for class certification on September 13, 2017. *Meadow* Dkt. 125.

23. On October 4, 2017, Plaintiffs and NIBCO moved the *Meadow* Court for a stay of all proceedings so that the parties could focus on alternative dispute resolution ("ADR") and mediation, concurrently with the *Cole* case. *Meadow* Dkt. 128. The Court granted the parties' joint motion for stay on October 6, 2017, *Meadow* Dkt. 129, and the *Meadow* case has remained stayed as settlement negotiations progressed.

24. During the pendency of *Meadow*, Berger Montague attorneys participated in fourteen (14) telephone conferences before Magistrate Judge Barbara D. Holmes.

25. Berger Montague has been contacted by many individuals who have reported issues with their PEX Tubing, Fittings, and/or Clamps, and attorneys and paralegals at the Firm have kept them updated as the litigation has progressed.

26. In all, Berger Montague has spent nearly 7,000 hours working on the litigation to date.

27. Counsel for the *Meadow* and *Cole* Plaintiffs, along with counsel for NIBCO, engaged in extensive, difficult, complex, and arm's-length negotiations regarding the settlement of Plaintiffs' and the Settlement Class Members' claims regarding the Covered Products. The Settlement was finally achieved only after multiple in-person mediation sessions overseen by Judge Wayne Andersen (Ret.) on June 12, 2017, December 13, 2017, January 29 and 30, 2018; by Judge Andersen and another professional mediator, Ross Hart, Esq., on March 11 and 12, 2018; and by Mr. Hart on April 17, 2018, and only after further numerous communications among counsel for the parties over the course of many months.

28. The total of seven mediation sessions with Judge Andersen and/or Mr. Hart enabled the parties to make progress toward a settlement and complete negotiations of a detailed, single-spaced 20-page Memorandum of Understanding ("MOU"), that ultimately was signed on July 20, 2018.

29. The parties then spent considerable time negotiating and drafting the Settlement Agreement and its accompanying exhibits, which ensures that the Settlement Class Members are provided with notice of the Settlement Agreement and its terms. The Settlement Agreement further provides that any Settlement Class Members who wish to do so, can opt out of the Settlement and pursue their own individual claims.

30. I believe that service awards for the Plaintiffs are appropriate in this case in

recognition of their time, costs and effort in the litigation in, for example, producing documents and information to their counsel, sitting for deposition, and permitting a home inspection, among other representative duties and services performed.

31. Based upon the foregoing, and for all reasons stated in Plaintiffs' Memorandum of Law in Support of Plaintiffs' Motion for Preliminary Settlement Approval, Plaintiffs respectfully request that the Motion be granted.

Dated: October 26, 2018

  
Shanon J. Carson