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October 24, 2017

The Honorable Esther Salas
United States District Court
for the District of New Jersey
Martin Luther King Courthouse
50 Walnut Street, Room 5076
Newark, NJ 07101

RE: *Halley, et al. v. Honeywell International, Inc., et al.*
Civ. Action No. 2-10-cv-03345 (ES) (JAD)

Dear Judge Salas:

Class Counsel have received the Court's letter of October 16, 2017 regarding Class Counsel's Motion for an Award of Reasonable Costs ("Motion"). Class Counsel appreciates the Court's consideration of the Motion, and respectfully submit this letter to object to the Court's July 31, 2017 Order and clarify the purpose and content of the Motion.

First, Class Counsel certainly appreciate the significance of the Third Circuit's mandate and the duties it imposes on this Court. In fact, Class Counsel's Motion was intended to help this Court *fulfill*, not "sidestep" that mandate, by gathering relevant record evidence and argument that support the Court's incipient reasoning regarding the award of costs in its Order Approving Class-Action Settlement (ECF No. 439). As indicated below, the Court's conclusions were sound, and not criticized by the Third Circuit. Class Counsel's Motion and Proposed Order permit the Court to provide the additional reasoning and support the Third Circuit requires.

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In Class Counsel's view, neither the letter nor the spirit of the Third Circuit's mandate requires appointment of a special master. Rather, the Third Circuit simply asked this Court to spell out in greater detail its reasoning for its award of expenses, because documentation of expenses was submitted *in camera*. (ECF No. 451-1 at 41.) As the Third Circuit stated, this Court's independent, *in camera* review of expense records was appropriate; however, "the District Court should provide sufficient reasoning so there is a basis to review for abuse of discretion" under the circumstances. (*Id.*) (emphasis added). The Third Circuit remanded "so the District Court may articulate why the costs were reasonably incurred in the prosecution of the case against Honeywell and to address the issue of commingled expenses, including, if appropriate, by requiring additional information from counsel or the parties." (*Id.*) (emphasis added). These underscored terms indicate that the Court's task on remand is additional elaboration of its reasoning—not wholesale reanalysis of the record or commencement of a costly special master process.

In fact, the Court's Opinion approving the class-action settlement has already indicated the shape its opinion on remand may take. In the portion of its prior Opinion dedicated to Class Counsel's petition for costs, the Court indicated that the fact that Class Counsel pursued claims against Honeywell on a joint and several basis, including a civil conspiracy claim, supported the requested cost award from the Settlement Fund. (ECF No. 439 at 46–47, 54–55.)

The Court's view on this point was correct. Class Counsel's recent filings, including a detailed proposed order, are meant to supply facts and reasoning not present in the Opinion, which will permit the Court to fulfill the Third Circuit's mandate. As Class Counsel have detailed, from the filing of the Complaint in 2010 until the filing of Fourth Amended Complaint on January 27, 2014, Plaintiffs alleged that Defendants were jointly and severally liable on all counts of the complaint. (*See* Class Counsel's Memorandum of Law, ECF No. 460-1 at 5–14.) After receiving additional discovery from PPG and the third-party Site Administrator, Plaintiffs were able to propose in the Fourth Amended Complaint geographically distinct classes that delimited the areas of contamination for which each Defendant was alleged to be liable. (*Id.* at 15–16.)

For the entire duration of the litigation, however, Plaintiffs maintained a claim for civil conspiracy against Honeywell, for which Honeywell and PPG were potentially jointly and severally liable. (*Id.* at 18.) Honeywell remained an actively participating defendant in the case throughout the litigation. (*Id.* at 19.) Although the focus of the litigation shifted to PPG's conduct after an agreement in principle was reached with Honeywell in July 2014, such that a majority of costs incurred after that point were allocated to the putative PPG class, the case nonetheless proceeded against

both defendants, on a joint and several basis, from the inception of the litigation until the Court approved the settlement agreement between the parties in May 2016. (*Id.* at 18–21.) Notably, less than \$9,000 in costs were allocated to the Honeywell classes after Plaintiffs and Honeywell executed a settlement agreement in November 2014, and were, as Class Counsel explained, for services that benefitted the Honeywell Classes. (ECF No. 460-1 at 20.)

As Class Counsel have articulated, the expenses sought from the Settlement Fund were advanced for services that benefitted the Honeywell Classes, including fact and expert discovery necessary to develop and support the claims against Honeywell. Moreover, as counsel for the Classes represented to the Third Circuit, discovery obtained relative to PPG’s activities benefitted the Honeywell Classes, as it assisted Plaintiffs’ experts to develop opinions relative to Honeywell’s liability. (ECF No. 456-4 at 29:21–31:4.)

Again, the Third Circuit did not reject this Court’s conclusions that the costs sought by Class Counsel were reasonable and that the so-called “commingled expenses” may properly be awarded from the Settlement Fund. Nor did it reject the basis for this conclusion incipient in this Court’s Opinion: that Class Counsel advanced the costs throughout the litigation on the basis of one or more counts of joint and several liability against both defendants. Rather, the Third Circuit simply asked the Court to elaborate its reasoning. Class Counsel’s Motion provides in one place, for ease of review, argument and record support that will enable the Court to further articulate its earlier conclusions regarding the award of costs.

In Class Counsel’s view, appointing a special master would impose additional, unnecessary costs and delay on the Honeywell Classes and would be a solution in search of a problem. The Third Circuit’s mandate can be fully accomplished on the basis of the record and reasoning compiled by Class Counsel in their Motion. The Third Circuit did not suggest otherwise.

Finally, on a related note, the Third Circuit held that Class Counsel had not made a “formal commitment to repay the Honeywell classes proportionally for expenses should the PPG litigation prove successful.” (ECF No. 451-1 at 41.) As reflected in Class Counsel’s June 2015 motion for fees and expenses (ECF No. 397-1 at 25), Class Counsel committed in their recent Motion that, if the PPG Class obtains a recovery of damages, Class Counsel will propose a formula to the Court “to allocate equitably between the Honeywell and PPG Classes the costs incurred for the benefit of both classes in prosecuting this litigation.” (ECF No. 460-1 at 24–25.) Class Counsel reiterate that commitment here. However, it would be premature to make that determination at this time without knowing what amount, if any, the putative

PPG Class will recover. Failing to charge appropriate expenses to the Honeywell Classes for services that benefited those classes would unfairly allow those Classes to receive the benefit of those expenses Class Counsel advanced in good faith on their behalf, without having to repay them.

Class Counsel appreciates the Court's time and attention to this matter, and will promptly provide any additional information the Court may require.

Very truly yours,

/s/ Howard A. Janet

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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

MATTIE HALLEY, ET AL.

On Behalf of Themselves
and All Others Similarly Situated,

Plaintiffs,

v.

HONEYWELL INTERNATIONAL,
INC., ET AL.

Defendants.

Civil Action No. 2:10-cv-3345 (ES) (JAD)

CERTIFICATE OF SERVICE

Document Electronically Filed

I, Allan Kanner, hereby certify that on October 24, 2017, Class Counsel's Response to the Court's Letter Order of October 16, 2017 [Rec. Doc. 466] and this Certificate of Service were electronically filed with the Clerk of this Court using the CM/ECF system. I also certify that the foregoing documents were served on all counsel of record, who are filing users, via Notices of Electronic Filing automatically generated by the Court's electronic filing system.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Respectfully submitted,

Dated: October 24, 2017

By: s/ Allan Kanner

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