

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

**SUZANNE BENTLEY, GERALD BENTLEY,)
RECINDA BOWSHIER, and WILLIAM)
BOWSHIER, individually, and on behalf)
of all persons similarly situated,)**

Judge Marbley

Magistrate Judge King

Plaintiffs,)

v.)

Civil Action No. C-1-03-079

**HONEYWELL INTERNATIONAL, INC.,)
a Delaware corporation, and SIEMENS ENERGY)
& AUTOMATION, INC., a Delaware corporation,)**

Defendants.)

**JOINT MOTION FOR FINAL APPROVAL OF PARTIAL CLASS SETTLEMENT
WITH SIEMENS AND GOULD AND PLAINTIFFS’ MEMORANDUM IN SUPPORT**

Plaintiffs, Suzanne Bentley, Gerald Bentley, Recinda Bowshier, and William Bowshier, Defendant, Siemens Energy & Automation, Inc. (“Siemens”) and Third-Party Defendant, Nikko Materials USA, Inc. d/b/a Gould Electronics (“Gould”) by their attorneys, move this Court pursuant to Rule 23(e) of the Federal Rules of Civil Procedure for the entry of the Final Approval Order attached hereto as Exhibit 1.¹ In further support of this motion, Plaintiffs submit the following memorandum.

PLAINTIFFS’ SUPPORTING MEMORANDUM

I. INTRODUCTION

The \$3 million partial settlement between Plaintiffs and Siemens and Gould is an outstanding result for the Class, and easily meets the Rule 23 requirement that it be “fair,

¹ While they do support the final approval of the settlement, Siemens and Gould (collectively “Settlers”) do not join in, and express no position with respect to, Plaintiffs’ Memorandum in Support of the Joint Motion. Settlers do, however, represent that for purposes of Rule 23(e) that they do not object to Class Counsel’s fee request and that they intend to allocate the \$3 million settlement cost between themselves pursuant to a separate agreement.

reasonable, and adequate.” The adequacy of this settlement is perhaps best evidenced by the fact that **no objections** have been interposed to this settlement by any of the approximately 10,000 Class members in this case to whom the Settlement Notice was directed. Accordingly, Plaintiffs request that this Court grant final approval to this settlement and enter the Final Approval Order and Judgment of Partial Dismissal.

II. PRELIMINARY APPROVAL AND THE SETTLEMENT NOTICE

On February 7, 2005, this Court granted preliminary approval to the class settlement, and entered an order (Doc.150) directing that by March 9, 2005 the Settlement Notice be mailed to the Class and published in the Urbana Citizen newspaper. Class Counsel obtained from the City of Urbana a list of all residential properties on the municipal water system, and caused the Settlement Notice to be mailed to all 3,528 residential properties on this list. (See, Affidavit of Shawn M. Collins, attached hereto as Exhibit 2, at ¶ 3) The mailing project was completed on March 9, 2005, within the deadline specified in the Settlement Agreement and the Preliminary Approval Order. (Id.) Only 132 of these mailings were returned by the postal service; all of which were updated and re-mailed. (Id.)

In addition to the mailing of the Settlement Notice, Class Counsel also caused the Settlement Notice to be published in the Urbana Citizen newspaper, as required in the Settlement Agreement and the Preliminary Approval Order. (Id. at ¶ 4) The Settlement Notice was published in the Urbana Citizen newspaper on March 9, 2005. (Id.)

The Preliminary Approval Order and the Settlement Notice specified that any Class Member who wished to object to the settlement must do so, in writing, by April 1, 2005 by filing an objection with the Court and mailing it to Class Counsel. That deadline has passed, and as of the time of this filing Class Counsel has received **no objection** to final approval of the settlement

from any Class Member. A check of the docket for this case indicates that no objections have been filed with the Clerk of the Court.

III. THE SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE AND SHOULD BE APPROVED PURSUANT TO FEDERAL RULE 23(e)(1)

A. The Settlement Terms

Siemens and Gould have agreed to pay \$3 million to the Class. Class Counsel is to receive one-third of that amount (\$1 million) in attorneys' fees. Each of the Class Representative families (the Bentley family and the Bowshier family) are to receive a \$30,000 payment in consideration of their assumption and diligent performance of the duties and responsibilities of class representatives. To avoid multiple distributions and unnecessary administrative costs associated therewith, distribution to the Class of the Siemens/Gould settlement proceeds is deferred pending resolution of Plaintiffs' claims against Honeywell.²

Each of these settlement terms were clearly explained in the Settlement Notice, which was approved by the Court prior to dissemination to the Class. Although fully informed of these settlement terms, no Class Member objected to final approval of the settlement.

² As this Court has been advised, Plaintiffs and Honeywell have recently reached a settlement providing class benefits well in excess of \$5 million (\$2.3 million in cash and in excess of \$3 million in benefits related to clean drinking water and further environmental investigation). If the Honeywell class settlement is approved, Class Counsel estimates that the combined proceeds from these two settlements will allow for substantial cash payments (ranging from \$5,500 to \$33,000) to be made to all members of the Plume Class sub-class, the certified sub-class in this case whose properties have been actually impacted by groundwater contamination. To assure that all 10,000 residents of Urbana connected to the municipal water system (the "Municipal Water sub-class" certified in this case) will have an uncontaminated drinking water supply, Honeywell has designed and constructed a granulated activated carbon filtration system (the "GAC System") to eliminate any possible discharge of contaminants from Urbana Municipal Wells 8 & 9, and has agreed to operate and maintain the GAC System for a period of 20 years. While the Municipal Water sub-class will not receive cash proceeds from these settlements, as the claims of these class members have been adequately addressed by the Honeywell GAC System, the Municipal Water sub-class will substantially benefit from Honeywell's agreement to ensure that Urbana has a safe and uncontaminated drinking water supply. The details of the settlement distribution will be addressed during the approval process on the Honeywell settlement. Plaintiffs anticipate that the Honeywell settlement (which has been agreed to but is still being documented) will very soon be submitted to the Court for preliminary approval.

B. The Siemens/Gould Settlement is Fair, Reasonable and Adequate

As this Court is well aware from its handling of this case, this case involved complex factual, scientific and legal issues. At every stage of this case up until a settlement was reached, this case was vigorously defended by Siemens and Gould. The \$3 million settlement was an arms-length settlement of disputed claims, entered into by the settling parties in good faith.

The Siemens/Gould settlement is an outstanding result for the Class and warrants approval under Federal Rule 23. \$3 million, on its face, is a substantial sum of money. Coupled with the benefits that have recently been achieved via the settlement with Honeywell, and assuming approval of that settlement, those members of the Class whose groundwater has been contaminated (those owning properties in the Plume Class area) will receive a significant settlement payout. A majority of the cash available for distribution to the Plume Class derives from the Siemens/Gould settlement. Based on Class Counsel's experience with settlements of other, factually similar environmental class action suits (LeClercq and Mejdrech, cases discussed extensively during the class certification briefing in this case), the settlement monies to be paid by Siemens and Gould are appropriate in amount, given the alleged relative role of Siemens and Gould in causing the contamination at issue in the suit, the value of residential properties in Urbana generally, and the potential value of the case as a whole. The Plume Class area well and non-well homeowners in this case, in fact, will on average receive higher settlement payouts than the settlement payouts to the well and non-well homeowners, respectively, in the LeClercq and Mejdrech cases, notwithstanding that property values in the class areas in those cases were on average substantially higher than average property values in Urbana.

C. Class Counsel's Request for Attorneys' Fees Should Be Approved

The Settlement Agreement provides for, and this Court has preliminarily approved, an award of \$1 million (one-third of the settlement total) to Class Counsel in attorneys' fees associated with this partial settlement. Because an award of attorneys' fees in this amount is appropriate under the circumstances of this case, and where no Class Member has interposed any objection to such an award, Class Counsel respectfully requests that \$1 million be awarded to Class Counsel in connection with the Siemens/ Gould settlement.

This is a common fund class action. In common fund class actions in this Circuit, awards of attorneys' fees based upon the percentage of the settlement benefits are appropriate and frequently utilized. See, e.g., DPL Inc., Securities Litigation, 307 F. Supp. 2d 947, 949-951 (S.D. Ohio 2004)(selecting percentage of the fund method over lodestar method); Manners v. American General Life Insurance Co., 1999 WL 33581944 at ** 28 -32 (M.D. Tenn. Aug. 11, 1999)(“the preferred approach to calculating attorneys' fees to be awarded in a common benefit case is as a percentage of the class benefit”). Indeed, as the Sixth Circuit has held, while the district court has discretion in selecting an appropriate basis in common fund cases to ensure that the fee awarded is reasonable under the circumstances, “the recent trend [is] toward adoption of a percentage of the fund method in such cases.” Rawlings v. Prudential-Bache Properties, Inc. 9 F. 3d 513, 515-516 (6th Cir. 1993)(“percentage of the fund method more accurately reflects the results achieved” in the case than does the lodestar method). See also, Gaskill v. Hess, 160 F.3d 361, 362 (7th Cir. 1998) (affirming an award of 38 percent of the fund as fees, commenting that “when a class suit produces a fund for the class, it is commonplace to award the lawyers for the class a percentage of the fund . . . in recognition of the fact that most suits for damages in this country are handled on the plaintiff's side on a contingent-fee basis”).

“[T]hroughout the Sixth Circuit, attorneys’ fees in class actions have ranged from 20% - 50%.” DPL, Inc., supra at 949. Here, if Class Counsel’s fee requests are allowed as to both the Siemens/Gould and the Honeywell settlements,³ Class Counsel would receive a total fee (\$1.766 million) of approximately **21%** of the total value of the more than \$8 million in benefits afforded by the two settlements. In determining the amount to award to class counsel, the Sixth Circuit has identified the following six factors a court should consider in making a reasonable award of attorneys’ fees: the value of the benefit conferred upon the class, society’s stake in rewarding attorneys who produce such benefits in order to maintain an incentive to others, whether the services were undertaken on a contingent basis, the value of the services on an hourly basis, the complexity of the litigation, and the professional standing and skill of all counsel. Ramey v. Cincinnati Enquirer, Inc., 508 F. 2d 1188, 1196 (6th Cir. 1974). Applying these factors, Class Counsel respectfully submits that they are entitled to be awarded attorneys’ fees as requested herein. The Siemens/Gould settlement achieves \$3 million in settlement benefits for the Class, a large recovery for the Class, and will ultimately (upon approval of the Honeywell settlement) permit significant monetary payments to be made to Plume Class members.⁴ Especially given the public health and safety aspects of this suit, society has a stake in rewarding Class Counsel for bringing this suit as an incentive to other attorneys to seek similar monetary and public health benefits in other cases. Class Counsel took this case, at great personal financial risk, on a contingent basis against two of the largest corporations in the world, and should be sufficiently compensated for the risk they assumed at a time no other lawyers were willing to bring this case. By the time this litigation is concluded and both this and the Honeywell settlement have been

³ In connection with the Honeywell settlement, Class Counsel is seeking a fee of \$766,000 (one-third of the \$2.3 million cash portion of the Honeywell settlement, but less than 15% of the value of the total benefits of that over \$5 million settlement).

⁴ In addition to recovering an additional \$2.3 million in cash for distribution to the Class, a key aspect of the Honeywell settlement is that it ensures an uncontaminated drinking water supply for the 10,000 residents of Urbana.

fully administered, Class Counsel will have devoted over 3,000 attorney hours to this case and advanced over \$140,000 in costs. (See, Collins Affidavit, Exhibit 2 hereto, at ¶ 5) As this Court is well aware, this is a most complex case, involving complicated scientific and legal issues, especially with respect to the extensive proceedings on class certification, both in the district court and in the Sixth Circuit in connection with Defendants' petitions for Rule 23(f) interlocutory appeals. Finally, Class Counsel have extensive experience and have achieved significant results for classes in these types of environmental class action cases, a track record and level of expertise Class Counsel respectfully submits should be recognized in the fee award in this case. In sum, reviewing all of these factors together, an award to Class Counsel of one-third of the Siemens/Gould settlement monies is appropriate. Again, assuming that the Honeywell settlement and the fee request therein is approved, Class Counsel would receive a total fee for their work in this case of approximately 21% of the value of settlement benefits obtained for the Class.

Based on the above, the outstanding result achieved for the Class in this partial settlement, the significant hourly effort and large fees incurred, and the very high level of risk assumed by Class Counsel on this matter, Class Counsel respectfully requests that this Court approve an award of attorneys' fees in the amount of \$1 million related to the Siemens/Gould settlement.

D. Entry of the Gould Dismissal Order and a Bar Order

In addition to necessary Rule 23 approval and entry of the Final Approval Order, this settlement is also conditioned on entry of the Gould Dismissal Order (dismissing Honeywell's third-party claims against Gould) and a Bar Order (providing Siemens and Gould contribution

protection under Ohio and federal law)⁵. As this settlement does not become effective until all of these orders have been entered, Plaintiffs, Siemens and Gould respectfully request that the Court contemporaneously enter the Final Approval Order, the Gould Dismissal Order and the Bar Order.

IV. CONCLUSION

Plaintiffs respectfully request that this Court grant final approval to the partial class settlement between Plaintiffs and Siemens and Gould, enter the Final Approval Order and Judgment of Partial Dismissal (Exhibit 1 to this filing), the Gould Dismissal Order (Exhibit 3 to this filing), and the Bar Order (Exhibit 4 to this filing, or as modified by this Court).

Dated: April 13, 2005

s/Michael D. Hayes
One of the Attorneys for Plaintiffs

s/Sandra J. Anderson
One of the Attorneys for Defendant
Siemens Energy & Automation, Inc.

s/John Rego
One of the Attorneys for Third-Party
Defendant Nikko Materials USA,
Inc. d/b/a/ Gould Electronics.

⁵While no one challenges that Siemens and Gould are entitled to the entry of a bar order in their favor, certain parties have challenged the language in the proposed bar order submitted by Siemens and Gould. As directed by this Court, memoranda have been filed on this issue, which is now ripe for determination.

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CERTIFICATE OF SERVICE

I hereby certify that on April 13, 2005, I electronically filed the **Joint Motion For Final Approval Of Partial Class Settlement With Siemens And Gould And Plaintiffs’ Memorandum In Support** with the Clerk of the Court using the CM/ECF system, which will result in notification of such filing to be electronically sent to all counsel of record that has appeared in this case and registered with the CM/ECF system. I further certify that I have mailed this document to the following non-CM/ECF participants:

| | |
|---|--|
| <p>Garrett B. Johnson Helen E. Witt Thomas E. Dutton Kirkland & Ellis 200 East Randolph Drive Chicago, Illinois 60601 Counsel for Defendant Siemens Energy & Automation, Inc.</p> | <p>H. Roderic Heard Brian W. Lewis Anthony G. Hopp Joseph F. Madonia Allison C. Conlon Wildman Harrold Allen & Dixon 225 West Wacker Drive Suite 2800 Chicago, Illinois 60606 Counsel for Defendant Honeywell International, Inc.</p> |
| <p>Cary R. Perlman Amy J. Kappeler Latham & Watkins 233 South Wacker Drive Chicago, Illinois 60606 Counsel for Third-Party Defendant Navistar International Corporation</p> | <p>John Julius Fahshender Benesch, Friedlander, Coplan & Arronoff, LLP 2300 BP Tower Cleveland, Ohio 44114 Counsel for Third-Party Defendant CV Materials</p> |

s/ Michael D. Hayes _____
 Michael D. Hayes
 One of Plaintiffs’ Attorney

EXHIBIT 1

(Final Approval Order)

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

SUZANNE BENTLEY, GERALD BENTLEY,)
RECINDA BOWSHIER, and WILLIAM)
BOWSHIER, individually, and on behalf)
of all persons similarly situated,)

Judge Marbley

Plaintiffs,)

Magistrate Judge King

v.)

Civil Action No. C-1-03-079

HONEYWELL INTERNATIONAL, INC.,)
a Delaware corporation, and **SIEMENS ENERGY**)
& AUTOMATION, INC., a Delaware corporation,))

Defendants.)

FINAL APPROVAL ORDER AND JUDGMENT OF PARTIAL DISMISSAL

In the Preliminary Approval Order dated February 7, 2005, this Court scheduled a Final Approval Hearing for April 15, 2005 at 10:00 a.m. to determine: (a) whether the proposed settlement between Plaintiffs (Suzanne Bentley, Gerald Bentley, Recinda Bowshier, and William Bowshier), Defendant Siemens Energy & Automation, Inc. (“Siemens”), and Third-Party Defendant Nikko Materials USA, Inc. d/b/a/ Gould Electronics (“Gould”), on the terms and conditions set forth in the Settlement Agreement and Limited Release (the “Agreement”), is fair, reasonable and adequate, and (b) whether to enter the Final Approval Order (Exhibit C to the Agreement), the Gould Dismissal Order (Exhibit D to the Agreement), and the Bar Order (Exhibit E to the Agreement). The Court also ordered that the Settlement Notice (Exhibit B to the Agreement) be served upon the Class in the manner described in the Preliminary Approval Order.

The Final Approval Hearing on the Agreement was duly held before this Court at which time all interested persons were afforded an opportunity to be heard. This Court has duly considered all of the submissions and arguments presented on the proposed settlement.

NOW, THEREFORE, THIS COURT FINDS, CONCLUDES, ADJUDGES AND DECREES THAT:

1. The Court has jurisdiction over the parties and the subject matter of this litigation.
2. The settlement reached between the Plaintiffs, individually and on behalf of the Class, Siemens and Gould, on the terms and conditions set forth in the Agreement is fair, reasonable, adequate, in the best interests of the Class, and is hereby approved.
3. The Plaintiffs and Class Counsel (The Collins Law Firm and Varga Berger Ledsky Hayes & Casey) have fairly and adequately represented the interests of the Class in this matter and in its resolution;
4. Each of the parties to the Agreement is bound by its obligations under the Agreement. The Agreement shall be consummated in accordance with the terms and provisions of the Agreement. The parties are directed to carry out their obligations under the Agreement;
5. The Notice of Settlement served on and published to the Class following entry of the Preliminary Approval Order constituted the best notice practical under the circumstances and is in full compliance with the notice requirements of due process and Fed R. Civ. P. 23. Because potential Class Members were served with the “Notice of Pendency of Class Action” simultaneously with the Notice of Proposed Partial Settlement, and because the opt-out rights of potential Class Members were fully explained in the “Notice of Pendency of Class Action,” the Court finds that it was unnecessary and potentially confusing to provide Class Members an additional opportunity to request exclusion pursuant to Fed. R. Civ. P. 23(e)(3) in connection with this settlement;

6. Upon the Effective Date of the Agreement, the Plaintiffs and the Class are (i) deemed to have released the claims within the scope of the limited release set forth in Paragraph 3 of the Agreement, and (ii) permanently enjoined from continuing to prosecute, or otherwise initiating, claims within the scope of the limited release set forth in Paragraph 3 of the Agreement;
7. All of the claims asserted in this lawsuit by the Plaintiffs, individually and on behalf of the Class, against Siemens are deemed released and dismissed with prejudice. However, the Class Representatives' individual and class claims against Defendant Honeywell International Inc. remain pending and are not effected by the entry of this Order;
8. By separate contemporaneous entries, the Court will enter the Gould Dismissal Order and the Bar Order, which are necessary conditions to the effectiveness of this settlement; and
9. This Court retains jurisdiction over all matters relating to the modification, interpretation, administration, implementation, effectuation and enforcement of the Agreement and this Order. The Court shall also retain jurisdiction over funds paid pursuant to the Agreement until such funds are distributed to the Class. If any or all of the Final Approval Order, the Gould Dismissal Order or the Bar Order is reversed on appeal, they shall all be null and void and the Agreement, the preliminary approval proceedings related to it, and the final approval hearings related to it are all without prejudice to the rights of the parties to the litigation.

IT IS SO ORDERED

Dated: _____, 2005

Algenon L. Marbley, Judge
United States District Court

EXHIBIT 2

(Affidavit of Shawn M. Collins)

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

**SUZANNE BENTLEY, GERALD BENTLEY,)
RECINDA BOWSHIER, WILLIAM)
BOWSHIER, individually, and on behalf)
of all persons similarly situated,)
Plaintiffs,)**

**Judge Algenon L. Marbley
Magistrate Judge King**

Civil Action No. C-1-03-079

v.)

**HONEYWELL INTERNATIONAL, INC.,)
a Delaware corporation, and SIEMENS ENERGY)
& AUTOMATION, INC., a Delaware corporation,)
Defendants.)**

HONEYWELL INTERNATIONAL, INC.,)

Third-Party Plaintiff,)

v.)

GOULD ELECTRONICS, INC., et al.,)

Third-Party Defendants.)

AFFIDAVIT OF SHAWN M. COLLINS

Shawn M. Collins, after duly being sworn on oath, deposes and states as follows:

1. I am a partner in the Collins Law Firm, P.C. (the "Collins Firm"), a law firm located in Naperville, Illinois. My firm and the Chicago law firm Varga Berger Ledsky Hayes & Casey (the "Varga Berger Firm") are counsel of record to Plaintiffs and the certified class in the above-captioned action, *Bentley, et al. v. Honeywell International, Inc., et al.* (Case No. C-1-03-079, United States District Court for the Southern District of Ohio, Eastern Division) (the "Lawsuit"). The Collins Firm and the Varga Berger Firm are collectively referred to below as "Class Counsel."

2. I am submitting this Affidavit in support of the Joint Motion for Final Approval of the Partial Class Settlement with Defendant Siemens and Third-Party Defendant Nikko Materials USA, Inc. d/b/a/Gould Electronics ("Gould"). This Affidavit is based on my personal knowledge as well as upon information assembled at my direction by personnel at the Collins Firm and the Varga Berger Firm.

3. After this Court on February 7, 2005 granted preliminary approval to the class settlement in this case, Class Counsel caused the Court-approved Notice of Proposed Settlement (the "Settlement Notice") to be mailed to residential addresses in the Class Area. Class Counsel had obtained from the City of Urbana a list of residential properties connected to the Urbana municipal water system, and mailed the Settlement Notice to all addresses on this list. This mailing was completed on March 9, 2005, within the time period required by the Settlement Agreement and the Preliminary Approval Order. To accomplish this mailing, Class Counsel retained First Class, Inc., an experienced class action administration service located in Chicago, Illinois to prepare and mail the Settlement Notice to all properties. As of the preparation of this Affidavit, 3,528 Settlement Notices (all of them) had been mailed, and, as of today's date, 132 (*i.e.*, less than 4%) had been returned as "unable to forward" (typically, because the post office forwarding order for the named addressee had expired). We re-sent Settlement Notices to all of these returns for whom we could find an appropriate follow-up address. This second mailing – addressed to "Owner/Current Resident" – totaled 126 of the 132 original returns.

4. In addition to the mailing of the Settlement Notice, Class Counsel also caused the Settlement Notice to be published in the local newspaper, the Urbana Daily Citizen, as required by the Settlement Agreement and the Preliminary Approval Order. The ad ran in the Urbana

Daily Citizen on March 9, 2005. (Attached as Exhibit "A" is the Certificate of Publication from this newspaper).

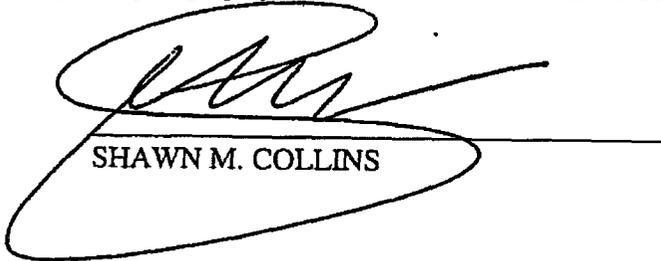
5. Class Counsel's representation of the Class in this case has been a very large undertaking, in both hours and costs incurred, involving great risk to both firms appointed as Class Counsel. To date, Class Counsel have expended over 2,600 hours of attorney time. Further, Class Counsel's experience in settlements like this one shows that hundreds of additional hours remain to implement the terms of the settlement. Class Counsel, to date, have incurred approximately \$130,000 in expenses prosecuting this case. Additionally, following final approval, Class Counsel will necessarily incur additional costs and expenses (estimated at \$10,000) related to settlement implementation tasks such as distribution of the settlement funds to the Class, mailing notice of the Honeywell Settlement, and travel to Ohio. This complex case (which was assigned at different times to various judges in this District) involved an extensive pre-suit investigation into the local hydrogeology and history of releases at the Defendants' facilities; contested class certification proceedings and class certification discovery, resulting in two petitions for interlocutory appeal to the Sixth Circuit; extensive fact discovery; the preparation and filing of a summary judgment motion; and extensive travel for investigation, discovery (including the resolution of discovery disputes), court appearances, settlement conferences and meetings with the class representatives and other class members. (Most of this effort is applicable to the claims against both defendants; some only to the claims against Honeywell.).

6. I believe that the partial settlement with Siemens and Gould achieved in this case is an outstanding result for the Class and respectfully request its approval under Rule 23(e). I

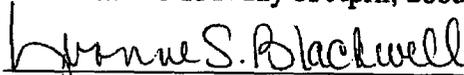
also believe that the one-third attorneys' fee award request of the cash portion of the settlement is appropriate and respectfully request such approval under Rule 23(e) and (h) and Rule 54(d)(2).

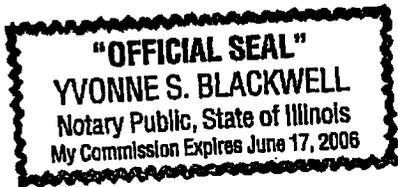
7. I make this affidavit under penalty of perjury under the laws of the United States.

Dated: April 13, 2005


SHAWN M. COLLINS

SUBSCRIBED and SWORN
Before m this 13th day of April, 2005.


Notary Public

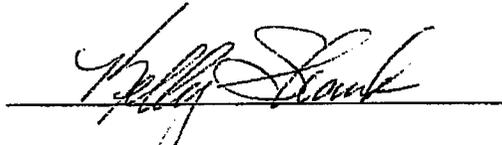


The State of Ohio Champaign County ss:

Personally appeared before me, Kelly Shank of the Urbana Daily Citizen, Daily newspaper, published at Urbana, Ohio, and made with that the notice hereto attached was published

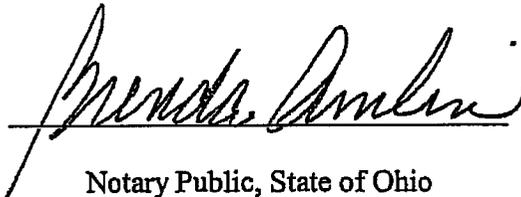
One consecutive day
and next after March 9, 2005

in such paper, printed in and of general circulation in the County aforesaid.



Sworn in by Kelly Shank and by her subscribed before me, this 9th day of

March, 2005



Notary Public, State of Ohio
Brenda Amlin

My commission expires June 4, 2008

\$485.00 - prepaid

Legal Notice

In the United States District Court For the Southern District of Ohio Eastern Division

Suzanne Bentley, Gerald Bentley, Recinda Bowshler, and William Bowshler, Individually, and on behalf of all persons similarly situated

Plaintiffs

vs.

Honeywell International, Inc., a Delaware corporation, and Siemens Energy & Automation, Inc., a Delaware corporation

Defendants

Civil Action No.

C-1-03-079

Notice of Proposed

Partial Settlement

To: ALL MEMBERS OF THE CERTIFIED CLASS IN THIS MATTER. PLEASE READ THIS NOTICE CAREFULLY.

As explained in the accompanying "Notice of Pendency of Class Action" document, Suzanne Bentley, Gerald Bentley, Recinda Bowshler and William Bowshler (the "Class Representatives") have filed the above-cap-

tioned lawsuit (the "Lawsuit") against Honeywell International Inc., (Honeywell") and Siemens Energy & Automation, Inc. ("Siemens"). The Lawsuit has been certified as a class action, and your right to remain a class member or to exclude yourself from the class action are explained in the "Notice of Pendency of Class Action" document.

This "Notice of Proposed Partial Settlement" document (the "Settlement Notice") is being sent to you at this time because the Class Representatives have entered into a Settlement Agreement and Limited Release (the "Agreement") with Siemens and Nikko Materials USA, Inc. d/b/a/ Gould Electronics ("Gould"). Gould is the company that, prior to Siemens, operated the facility located at 145 Dellinger Road in Urbana, Ohio that is presently owned and operated by Siemens. Honeywell has sued Gould and other companies in the Lawsuit, alleging that they

are responsible for causing some of the contamination that the Class Representatives have accused Honeywell of causing. The Class Representatives' settlement with Siemens and Gould, however, does not involve Honeywell. Thus, whether or not this partial settlement with Siemens and Gould is approved, the claims asserted in the Lawsuit against Honeywell will continue to be prosecuted, and monetary recovery and other relief will be sought from Honeywell over and above the settlement recoveries (described below) to be obtained from the proposed settlement with Siemens and Gould.

Because this case has been certified as a class action, judicial approval of the Agreement in the Lawsuit is necessary. On February 7, 2005, the Court entered an order in the Lawsuit granting preliminary approval of this Agreement, directing that this Settlement Notice be sent to the Class, and setting this matter for a hearing on April 15, 2005 to consider final approval of the Agreement.

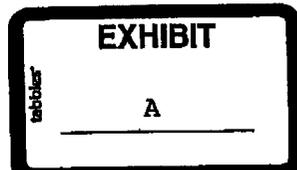
You are being sent this Settlement Notice because you may be a member of the Class. This Settlement Notice explains the general terms of the settlement and affords you an opportunity to be heard regarding the final approval of the settlement.

THE PROPOSED SETTLEMENT

The Class Representatives and Siemens and Gould have agreed to the settlement described below. UNLESS YOU OBJECT TO THIS SETTLEMENT, YOU NEED NOT DO ANYTHING AT THIS TIME.

The Class Representatives and Class Counsel believe that this Settlement is fair, reasonable and in the best interest of the Class. The Court has determined, preliminary, that the Settlement is fair, reasonable and in the best interest of the Class, subject to the hearing on final approval of the Settlement.

The main terms of the Settlement are as follows:
Payment to the Class:



Without admitting liability or fault, Siemens and Gould agree to jointly pay the total sum of Three Million Dollars (\$3,000,000.00) to Class Representatives and the Class (the "Settlement Funds"). Subject to approval by the Court, Approximately one-third of the Settlement Funds shall be paid to the Class Counsel in attorneys' fees. The balance of the Settlement funds, after the payment of attorneys' fees (hereinafter, the "Class Payments"), shall be paid to all members of the Class who are deemed to have incurred property damages related to the environmental contamination at issue in the Lawsuit. Given that Plaintiff's claims against Honeywell remain to be resolved, and to avoid the cost of multiple distributions to the Class, the Class Payments shall be held by Class Counsel in an interest bearing or other appropriate account approved by the Court and distributed to the Class at the conclusion of the Lawsuit (along with other monies, if any, subsequently recovered from Honeywell via settlement or judgment). Prior to distribution of the Class Payments to the Class, Class Counsel shall apply for and obtain court approval of an appropriate methodology for distributing the Class Payments to the Class.

Limited Release: The Agreement provides that the Class Representatives and the Class shall release Siemens and Gould, as follows: The Class Representatives and the Class release, acquit and forever discharge Siemens and Gould, and their past and present officers, directors, agents, attorneys, employees, shareholders, successors, predecessors, assignees, parents, subsidiaries, affiliates and sister corporations (the "Released parties") from and against all claims, demands, damages, trespass or nuisance, annoyance damages, liabilities, injunctive remedies, expenses and causes of actions at law or equity which were or could have been claimed in the Amended Complaint in the Lawsuit. This release does

not, however, preclude or limit in any way the Class Representatives or any Class Member from asserting claims against any of the Released Parties alleging sickness, disease or death caused by exposure to chemicals alleged to have been released by Siemens or Gould, and does not preclude or limit in any way the Released Parties' defenses to any such claims or allegations. Further, nothing in this release provision shall be construed to release any claims the Class Representatives or the Class may have against Honeywell, Q3 JMC, Inc., Johnson Welded Products, Inc., International Truck and Engine Corporation, Navistar International Corporation, CV Materials, Ltd., or any other person or entity who is not designated herein as a Released Party.

FAIRNESS HEARING

A hearing will be held on the fairness of the proposed settlement. At the hearing, the Court will be available to hear any objections and arguments concerning the fairness of the proposed settlement. The hearing will take place on April 15, 2005 at 10:00am before Judge Aigenon L. Marbley in Courtroom 1 of the United States District Court for the Southern District of Ohio, Joseph P. Kinneary U.S. Courthouse, 85 Marconi Boulevard, Columbus, Ohio 43215.

YOUR OPTIONS

Unless you object to this settlement, YOU NEED NOT DO ANYTHING AT THIS TIME.

If you object to the settlement, you must file your objection in writing with the Clerk of the United States District Court for the Southern District of Ohio, Joseph P. Kinneary U.S. Courthouse, Room 260, 85 Marconi Boulevard, Columbus, Ohio 43215 and serve a copy of your objection on Class Counsel at the addresses listed below. The objection must be received by the Clerk of the Court on or before April 1, 2005, and must include your name and address, proof of your membership in the Class, refer to the name and number of the case, and include a statement of the reasons why you believe that the Court should find that the proposed settlement is not in the best interests of the Class. Please note that it is not sufficient to simply state that you object. You must in writing state reasons why the settlement should not be approved.

If the Agreement is not approved, the Lawsuit will proceed as against Siemens and Gould as if no settlement had been attempted. In that event, Siemens and Gould will retain the right to contest the merits of the claims being asserted against them in the lawsuit. In any event, the Lawsuit will proceed as against Honeywell. There can be no assurance that if the settlement is not approved, the Class will recover more than is provided for in the settlement, if anything.

INQUIRES

Any questions concerning this Settlement Notice or the

Settlement can be directed to Class Counsel at the addresses below or by calling Class Counsel:

Shawn M. Collins
Edward J. Manzke
The Collins Law Firm, PC
1770 North Park Street
Suite 200
Naperville, IL 60563
Telephone: (630) 527-1595

Norman B. Berger
Michael D. Hayes
Varga Berger Ladosky Hayes
& Casey
224 South Michigan Ave.
Suite 350
Chicago, IL 60604-2507
Telephone: (312) 341-9400

PLEASE DO NOT CALL OR WRITE THE CLERK OF THE COURT. THE CLERK OF THE COURT CANNOT ANSWER QUESTIONS CONCERNING THE LAWSUIT OR THE SETTLEMENT.

By Order of the United States District Court for the Southern District of Ohio, Eastern Division
March 9, 2005
I.C. #427174

The State of Ohio
Champaign County ss:

Personally appeared before me, Kelly
Shank of the Urbana Daily Citizen, Daily
newspaper, published at Urbana, Ohio, and
made with that the notice hereto attached
was published

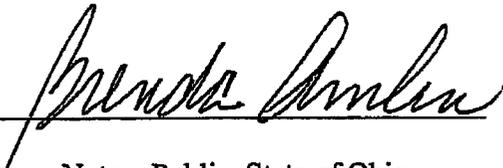
One consecutive day
and next after March 9, 2005

in such paper, printed in and of general
circulation in the County aforesaid.



Sworn in by Kelly Shank and by her
subscribed before me, this 9th day of

March, 2005



Notary Public, State of Ohio
Brenda Amlin

My commission expires June 4, 2008

\$420.52 - prepaid

Legal Notice

In the United States District Court For the Southern District of Ohio Eastern Division
Suzanne Bentley, Gerald Bentley, Reelinda Bowshier, and William Bowshier, individually, and on behalf of all persons similarly situated

Plaintiffs

vs.

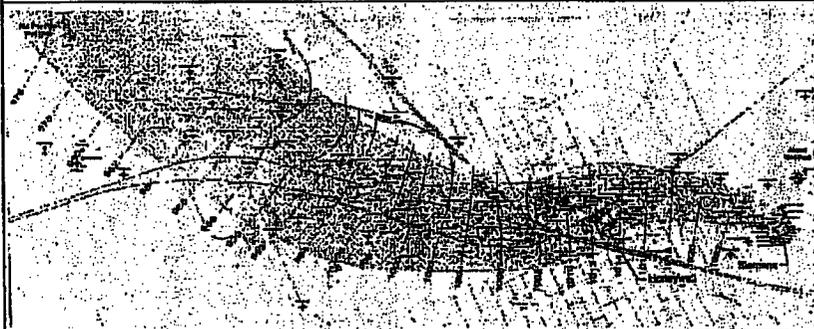
Honeywell International, Inc., a Delaware corporation, and Siemens Energy & Automation, Inc., a Delaware corporation

Defendants

Civil Action No. C-1-03-078

Notice of Pendency of Class Action

To: All PERSONS WHO 1) OWN OR RESIDE IN RESIDENTIAL PROPERTY WITHIN THE AREA DEPICTED ON EXHIBIT 1 TO THIS NOTICE, AND/OR 2) OWN OR RESIDE IN RESIDENTIAL PROPERTY WHICH RECEIVES ITS WATER FROM THE CITY OF URBANA MUNICIPAL WATER SYSTEM. DESCRIPTION OF THE LAWSUIT:



The above-captioned lawsuit, filed by Plaintiffs Suzanne and Gerald Bentley and Reelinda and William Bowshier against Defendants Honeywell International, Inc. and Siemens Energy & Automation, Inc., is pending in this Court. In their Amended Class Action Complaint, Plaintiffs allege that both Defendants released hazardous chemicals at their manufacturing facilities in Urbana, Ohio over a period of many years which have contaminated the soil and ground water on the properties owned by Defendants, and that these hazardous chemicals have migrated off of the Defendant's properties and have contaminated properties within the area depicted on Exhibit 1 to this Notice and have also contaminated municipal wells which provide water to most residential properties in Urbana. Plaintiffs seek to enjoin the Defendants from allowing further contamination to spread throughout Urbana, to require Defendants to remediate the subject contamination and provide a permanent, safe domestic water supply, to recover the costs of responding to the contamination, and to recover compensatory and punitive damages. This lawsuit does not seek to recover for any personal or bodily injuries suffered by any Urbana resident. The Defendants have filed answers in the lawsuit in which they deny that they are liable on any of the claims asserted by Plaintiffs in the lawsuit.

THE CLASS CERTIFICATION RULING

On September 23, 2004, the Court entered an order under Rule 23 of the Federal Rules of Civil Procedure, certifying this lawsuit as a class action on the issues of liability and injunctive relief. A trial on these issues - whether the Defendants are liable to Plaintiffs and the Class, and whether injunctive relief (i.e. abatement and remediation of the alleged contamination) is warranted - is scheduled to commence on November 7, 2005. In the event that one or both of the Defendants is found liable at this first trial, further proceedings will be scheduled and conducted to address the issue of whether Plaintiffs and individual members of the Class are entitled to recover monetary damages. The Court has designated Suzanne and Gerald Bentley and Reelinda and William Bowshier as Class Representatives, and Shawn Collins and Edward Manzka (of The Collins Law Firm, P.C.) and Norman Berger and Michael Hayes (of Varga Berger Ledaky Hayes & Casey) as Class Counsel.

YOUR RIGHTS

This Notice is given to you in the belief that you may be a member of the Class whose rights may be affected by this lawsuit. This Notice should not be understood as an expression of any opinion by the Court concerning the merits of this action. The Court has not made any determination as to the merits of Plaintiffs' claims. This Notice is intended to advise you of the pendency of this class action and of your rights with respect thereto. IF YOU OWN, OR RESIDE IN RESIDENTIAL PROPERTY IN THE AREA DEPICTED ON EXHIBIT 1 TO THIS NOTICE AND/OR OWN OR RESIDE IN RESIDENTIAL PROPERTY WHICH RECEIVES ITS WATER FROM THE CITY OF URBANA MUNICIPAL WATER SYSTEM, YOU WILL BE INCLUDED IN THE CLASS, UNLESS YOU REQUEST TO BE EXCLUDED FROM THE CLASS IN THE MANNER SET FORTH BELOW. If you remain a member of the Class you will be bound by any judgment, whether favorable or unfavorable. If there is a recovery for the Class, you may be entitled to share in the proceeds less any costs, expenses and attorneys' fees which the Court may allow to be reimbursed out of any such recovery. If the Defendants prevail, however, Plaintiffs, the Class and Class Counsel may get no compensation or reimbursement. In any event, you will not be responsible to the Defendants for any Court costs. If you do not request exclusion, you will be represented by Class Counsel at no expense to you. You may, however, remain in the Class and appear personally or through your own counsel at your own expense. IF YOU WISH TO BE EXCLUDED FROM THE CLASS, YOU MUST SEND A FIRST CLASS MAIL LETTER SETTING FORTH YOUR NAME, PRESENT ADDRESS AND A STATEMENT THAT YOU WISH TO BE EXCLUDED FROM THE CLASS (SUCH AS "I WISH TO BE EXCLUDED FROM THE CLASS IN THIS CASE"), POSTMARKED ON OR BEFORE APRIL 8, 2005. If you do not request exclusion, or if your letter of exclusion is postmarked after April 8, 2005, you will be included in the Class. IF YOU WISH TO BE INCLUDED IN THE CLASS YOU NEED NOT TAKE ANY ACTION. MAILING:

Letters requesting exclusion should be mailed first class mail and postmarked on or before April 8, 2005, to:

Shawn M. Collins
Edward J. Manzka
The Collins Law Firm, PC
1770 North Park Street
Suite 200
Naperville, IL 60563

AVAILABILITY OF LAWSUIT PAPERS

The Plaintiffs' Amended Class Action Complaint, the Defendants' Answers, the papers filed by the parties concerning class certification, the Court's September 23, 2004 order granting class certification and all other papers filed in or pertaining to this lawsuit are available for inspection at the Office of the Clerk, Joseph P. Kinrisky U.S. Courthouse, Room 280, 85 Marconi Boulevard, Columbus, Ohio 43215, and are there available for copying at your own expense. PLEASE DO NOT CALL OR WRITE THE COURT OR THE CLERK OF THE COURT. THE COURT AND THE CLERK CANNOT ANSWER QUESTIONS CONCERNING THE LAWSUIT.

By Order of the United States District Court for The Southern District of Ohio

Eastern Division
March 9, 2005
I.O. #427173

EXHIBIT 3

(Gould Dismissal Order)

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

| | |
|--|--|
| SUZANNE BENTLEY, GERALD BENTLEY,) RECINDA BOWSHIER, and WILLIAM) BOWSHIER, individually, and on behalf) of all persons similarly situated,)) Plaintiffs,)) v.)) HONEYWELL INTERNATIONAL, INC.,) a Delaware corporation, and SIEMENS ENERGY) & AUTOMATION, INC., a Delaware corporation,))) Defendants.) | Judge Marbley Magistrate Judge King Civil Action No. C-1-03-079 |
|--|--|

**ORDER DISMISSING THIRD-PARTY CLAIMS OF
HONEYWELL INTERNATIONAL, INC. AGAINST
NIKKO MATERIALS USA, INC. D/B/A/ GOULD ELECTRONICS**

In the Preliminary Approval Order dated February 7, 2005, this Court scheduled a Final Approval Hearing for April 15, 2005 at 10:00 a.m. to determine: (a) whether the proposed settlement between Plaintiffs (Suzanne Bentley, Gerald Bentley, Recinda Bowshier, and William Bowshier), Defendant Siemens Energy & Automation, Inc. (“Siemens”), and Third-Party Defendant Nikko Materials USA, Inc. d/b/a Gould Electronics (“Gould”), on the terms and conditions set forth in the Settlement Agreement and Limited Release (the “Agreement”), is fair, reasonable and adequate, and (b) whether to enter the Final Approval Order (Exhibit C to the Agreement), the Gould Dismissal Order (Exhibit D to the Agreement), and the Bar Order (Exhibit E to the Agreement). The Court also ordered that the Settlement Notice (Exhibit B to the Agreement) be served upon the Class in the manner described in the Preliminary Approval Order.

The Final Approval Hearing on the Agreement was duly held before this Court at which time all interested persons were afforded an opportunity to be heard. This Court has duly considered all of the submissions and arguments presented on the proposed settlement, as well as the record in this matter as a whole.

NOW, THEREFORE, THIS COURT FINDS, CONCLUDES, ADJUDGES AND DECREES THAT:

1. The settlement reached between the Plaintiffs, individually and on behalf of the Class, and Siemens and Gould, on the terms and conditions set forth in the Agreement, is fair, reasonable, adequate, in the best interests of the Class, and is hereby approved;
2. The settlement reached between the Plaintiffs, individually and on behalf of the Class, and Siemens and Gould, on the terms and conditions set forth in the Agreement, was entered into in good faith, there has been no collusion, fraud or tortious conduct, and the settlement was reached in arm's-length negotiations; and
3. Defendant Honeywell International Inc.'s Second Amended Third-Party Complaint against Third-Party Defendant Gould Electronics Inc. is hereby dismissed with prejudice in its entirety.

IT IS SO ORDERED

Dated: _____, 2005

Algenon L. Marbley, Judge
United States District Court

EXHIBIT 4

(Bar Order)

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

SUZANNE BENTLEY, GERALD BENTLEY,)
RECINDA BOWSHIER, and WILLIAM)
BOWSHIER, individually, and on behalf)
of all persons similarly situated,)

Judge Marbley

Magistrate Judge King

Plaintiffs,)

v.)

Civil Action No. C-1-03-079

HONEYWELL INTERNATIONAL, INC.,)
a Delaware corporation, and **SIEMENS ENERGY**)
& AUTOMATION, INC., a Delaware corporation,))

Defendants.)

BAR ORDER

In the Preliminary Approval Order dated February 7, 2005, this Court scheduled a Final Approval Hearing for April 15, 2005 at 10:00 a.m. to determine: (a) whether the proposed settlement between Plaintiffs (Suzanne Bentley, Gerald Bentley, Recinda Bowshier, and William Bowshier), Defendant Siemens Energy & Automation, Inc. (“Siemens”), and Third-Party Defendant Nikko Materials USA, Inc., d/b/a Gould Electronics (“Gould”), on the terms and conditions set forth in the Settlement Agreement and Limited Release (the “Agreement”), is fair, reasonable and adequate, and (b) whether to enter the Final Approval Order (Exhibit C to the Agreement), the Gould Dismissal Order (Exhibit D to the Agreement), and the Bar Order (Exhibit E to the Agreement). The Court also ordered that the Settlement Notice (Exhibit B to the Agreement) be served upon the Class in the manner described in the Preliminary Approval Order.

The Final Approval Hearing on the Agreement was duly held before this Court at which time all interested persons were afforded an opportunity to be heard. This Court has duly considered all of the submissions and arguments presented on the proposed settlement, and on the entire record in this case.

NOW, THEREFORE, THIS COURT FINDS, CONCLUDES, ADJUDGES AND DECREES THAT:

1. The settlement reached between the Plaintiffs, individually and on behalf of the Class, and Siemens and Gould, on the terms and conditions set forth in the Agreement, is fair, reasonable, adequate, in the best interests of the Class, and is hereby approved;
2. The settlement reached between the Plaintiffs, individually and on behalf of the Class, and Siemens and Gould, on the terms and conditions set forth in the Agreement, was entered into in good faith: there has been no collusion, fraud or tortious conduct and the settlement was reached in arm's-length negotiations;
3. Upon the Effective Date of the Agreement, Siemens and Gould are hereafter and permanently released and discharged from any claim, counterclaim, cross-claim, third-party claim, or any other action in any way arising out of or relating to the individual and class claims settled within the scope of the limited release provision of Paragraph 3 of the Agreement (including, without limitation, any claim or action seeking contribution and/or indemnification, however denominated), whether such claims are legal or equitable, known or unknown, foreseen or unforeseen, matured or unmatured, accrued or unaccrued;
4. If, following a trial of the Lawsuit or the Third-Party Lawsuit, any of the Plaintiffs or any Class Member obtains a judgment, award or recovery against the Non-settling Defendant, the Non-settling Third-Party Defendants, or any other person on any claim asserted in, relating to, arising out of the subject matter of the Litigation for which Siemens and/or Gould would or could be liable by a claim for contribution or indemnity but for the provisions of this Bar Order, each such Plaintiff or Class Member shall reduce his, her or its judgment, award or recovery against such person in accordance with applicable law; and

5. This Court retains jurisdiction over all matters relating to the modification, interpretation, administration, implementation, effectuation and enforcement of the Agreement and this Order.

IT IS SO ORDERED

Dated: _____, 2005

Algenon L. Marbley, Judge
United States District Court