

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

IN RE: RAILWAY INDUSTRY ) Master Docket Misc. No. 18-798  
EMPLOYEE NO-POACH ANTITRUST )  
LITIGATION ) MDL No. 2850  
)  
This Document Relates to: )  
ALL ACTIONS )

**DECLARATION OF DEREK SMITH  
ON BEHALF OF NOTICE ADMINISTRATOR REGARDING  
COMPLIANCE WITH NOTICE REQUIREMENTS**

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I, Derek Smith, declare as follows:

1. I am employed as a Director of Class Action Services by KCC Class Action Services, LLC (“KCC”), located at 3301 Kerner Boulevard in San Rafael, CA. KCC serves as the Court-appointed Notice Administrator regarding the Class Action Settlements in this litigation. As the Director at KCC, I oversaw the administrative services provided in this matter. I have personal knowledge of the facts set forth herein and, if called as a witness, could and would testify competently thereto.

2. On April 20, 2020, KCC caused the Court-approved notice forms to be mailed and e-mailed to 5,842 confirmed Class Members with addresses available (32 addresses were unavailable at the time of this mailing) and 3,356 potential Class Members utilizing the names, mail, and email addresses provided by Knorr for Knorr Brake Company LLC and New York Air Brake LLC and by Wabtec for Westinghouse Air Brake Technologies Corporation, Wabtec Railway Electronics, Inc., Railroad Controls, LP, Xorail, Inc., Faiveley Transport, S.A. and Faiveley Transport North America Inc.

3. Before sending the notices, KCC updated mailing addresses through the National Change of Address database. Two different versions of long-form and e-mail notices were utilized in this case to describe the Settlements. The majority of class members, who could be definitively identified based on Defendants' records, received versions of the notices informing them that they did not need to make a claim to receive a payment. These Class Members are referred to as the confirmed Class Members. However, because Defendants' data does not identify the job titles for employees who only worked for Wabtec prior to January 1, 2016, Faiveley prior to November 1, 2016, or Knorr Brake Company prior to January 1, 2011, employees who worked for Defendants during those times received versions of the notice that explained how to file a timely claim to participate in the Settlements. These employees are referred to as potential Class Members. A true and correct copy of the Notices mailed and e-mailed to prospective class members, based on whether their status was confirmed or potential, is attached as **Exhibit A**.

4. After the initial April 20, 2020 mailing, KCC was provided with Social Security Numbers for the 32 confirmed Class Members whose addresses were missing. KCC was able to find updated addresses from searches and promptly mailed the Notices to the 32 confirmed Class Members.

5. In total, 1,107 Notices were returned as undeliverable. These Class Members' names and addresses were run through a skip-trace search, and, to date, KCC promptly re-mailed Notices to 697 Class Members for whom skip trace searches yielded updated addresses via First Class mail. Of those 697 re-mailed Notices, 222 were again returned as undeliverable. Of the 1,107 traces performed, KCC did not obtain updated addresses for 410 undeliverable Class Notices.

6. On April 20, 2020, KCC also established the settlement website at [www.railwaynopeach.com](http://www.railwaynopeach.com), with links to each form of notice approved by the Court, copies of the Settlement Agreements, the Court's preliminary approval order, and the Consolidated Amended Complaint. In addition, the website included a page titled "Am I Eligible?," an "FAQ" section with answers to common questions, a link to the online claim form, a page titled "Releases" explaining what claims Class Members who did not opt out would be releasing, and two separate links to a list of eligible job titles for Wabtec and Knorr employees. The website also had a contact page with contact information for KCC (mail, e-mail, and telephone), and Class Counsel. In addition, KCC timely updated the website with relevant court filings, including Plaintiffs' motion for attorneys' fees, costs, and service awards, and supporting exhibits and declarations. The website was also updated to reflect Plaintiffs' subsequently-filed Notice of Errata. A copy of Plaintiffs' motion for final approval and supporting documentation will be posted shortly after it is filed.

7. KCC also arranged for the publication of a full-page, Court-approved notice in the May 2020 edition of *Progressive Railroading*, a true and correct copy of which is attached as **Exhibit B**. In addition, KCC purchased a banner notice linking to the Settlement Website on [Progressiverailroading.com](http://Progressiverailroading.com). This notice was displayed on [Progressiverailroading.com](http://Progressiverailroading.com) to 137,031 visitors from May 1, 2020 through May 31, 2020. A copy of the digital notices, as they appeared on [Progressiverailroading.com](http://Progressiverailroading.com), is attached hereto as **Exhibit C**.

8. As of July 8, 2020, the settlement website has received 4,660 unique visits, and KCC responded to 786 inquiries received by e-mail and or by phone. KCC responded to all individuals who contacted it with questions about the Settlements. For example, approximately 10 individuals contacted KCC for clarification about whether the Settlement Class included

individuals who worked for Wabtec subsidiaries that were not named as Defendants in the litigation or specifically identified in the Settlement Class definition. In consultation with Co-Lead Counsel and Defendants, KCC directly contacted these individuals who made inquiries about that issue to confirm that the Settlement Class includes only those whose job titles were provided and listed on the settlement website, and who worked for a named Defendant in the litigation. In collaboration with Co-Lead Counsel and Defendants, KCC also added the following language to the settlement website to clarify the matter:

- a. On the homepage, the following sentence was added to the end of the answer to “Who is included in the Settlement Class?”: “Individuals who did not work for one of the companies named above are not Class Members.”
- b. On the “Am I Eligible” page, the same sentence was added to the end of the text.
- c. On the “FAQ” page, an additional question (No. 27) and answer was added as follows:

Q. If I worked for a subsidiary of Wabtec or Knorr that was not named as a Defendant in the lawsuit, am I a member of the Settlement Class?

A. No. To be a member of the Settlement Class, you must have held a job that is on the Eligible Job Title List and worked for one of the following named Defendants during the class period: Westinghouse Air Brake Technologies Corporation, Wabtec Railway Electronics, Inc., Railroad Controls, L.P., Xorail Inc., Faiveley Transport, S.A., Faiveley Transport North America Inc., Knorr Brake Company LLC, and New York Air Brake LLC.

9. The 5,874 confirmed Class Members were automatically entitled to receive a payment from the Settlements and did not have to file a claim form. Of the 3,356 potential Class Members, KCC received 996 timely claims and 22 untimely claims, which will be treated as timely.

10. Through the validation process, KCC determined that 933 claims were valid and approved. With respect to the remaining claims, 32 were deemed to be invalid, and 53 remain under review pending receipt of additional information from the claimant. Thus, there are 6,807 Class Members that will be receiving proceeds from the Settlements at this time (5,874 confirmed Class Members plus the 933 who filed valid claims). If all 53 pending claims are also determined to be valid, there will be a total of 6,860 Class Members. Thus, over 73% of the 9,230 confirmed and potential Class Members to whom notice was sent will be participating in the settlements.

11. KCC has not received any objections from Class Members to the Settlements or to the request for attorneys' fees, expenses, and incentive awards.

12. KCC has received four requests from individuals to opt out of the Class. Three of the individuals were listed as confirmed Class Members, and one of the individuals was listed as a potential Class Member. A list of these individuals is attached as **Exhibit D**.

13. To date, KCC has received 110 requests for a mailed or e-mailed copy of the Notice over the phone, by email, or by mail. KCC sent a copy whenever one was requested.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge, and that this declaration was executed in Sonoma, California on July 17, 2020.

By:



DEREK SMITH