

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY  
CIVIL ACTION NO. 13-7871 (FLW) (TJB)

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KIMBERLY COLE and ALAN	:	<u>TRANSCRIPT OF FINAL</u>
COLE, et al., etc.,	:	<u>SETTLEMENT APPROVAL</u>
Plaintiffs	:	
v.	:	<u>APRIL 8, 2019</u>
NIBCO INC.,	:	
Defendant	:	
-----	:	
	:	

CLARKSON S. FISHER UNITED STATES COURTHOUSE  
402 EAST STATE STREET, TRENTON, NJ 08608

B E F O R E: THE HONORABLE FREDA L. WOLFSON, USDJ

A P P E A R A N C E S:

LITE, DePALMA, GREENBERG, LLC  
 BY: BRUCE D. GREENBERG, ESQUIRE  
 -and-  
 SAUDER, SCHELKOPF, LLC  
 BY: JOSEPH G. SAUDER, ESQUIRE  
 -and-  
 BERGER, MONTAGUE, PC  
 BY: SHANON J. CARSON, ESQUIRE  
 JACOB M. POLAKOFF, ESQUIRE  
 LAWRENCE DEUTSCH, ESQUIRE  
 On behalf of the Plaintiffs

MORGAN, LEWIS & BOCKIUS, LLP  
 BY: J. GORDON COONEY, JR., ESQUIRE  
 FRANCO A. CORRADO, ESQUIRE  
 On behalf of the Defendant NIBCO, Inc.

(Continued.)

\* \* \* \* \*  
**VINCENT RUSSONIELLO, CCR**  
**OFFICIAL U.S. COURT REPORTER**  
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A P P E A R A N C E S C O N T I N U E D :

EISENBERG, GOLD & AGRAWAL, PC  
BY: JANET L. GOLD, ESQUIRE  
On behalf of the Objector Jeffrey Palmer

A L S O P R E S E N T :

LOWENSTEIN, SANDLER, LLP  
BY: GAVIN J. ROONEY, ESQUIRE  
On behalf of the Objectors Christianson Air  
Conditioning and Plumbing, LLC, and Dupree Plumbing  
Co., Inc.

WOOD, SMITH, HENNING & BERMAN, LLP  
BY: KELLY A. WATERS, ESQUIRE  
On behalf of the Objector D.R. Horton, Inc.

1 (In open court.)

2

3 THE DEPUTY CLERK: All rise.

4 THE COURT: Thank you.

5 Good morning. Let me have the appearances.

6 Everyone else may be seated.

7 MR. GREENBERG: Good morning, your Honor.

8 Bruce Greenberg, Lite, DePalma, Greenberg in  
9 Newark, on behalf of the plaintiffs and the settlement  
10 class.

11 MR. SAUDER: Good morning, your Honor.

12 Joe Sauder from Sauder, Schelkopf on behalf of  
13 plaintiffs.

14 MR. CARSON: Shanon Carson from Berger  
15 Montague, your Honor, for the plaintiffs, and I'm here  
16 with from my firm Jacob Polakoff and Larry Deutsch.

17 THE COURT: Thank you.

18 MR. COONEY: Good morning, your Honor.

19 Gordon Cooney from Morgan, Lewis & Bockius on  
20 behalf of NIBCO, and with me is my partner Franco  
21 Corrado, and the general counsel of NIBCO Mr. Edward  
22 Sullivan.

23 THE COURT: Thank you.

24 MS. GOLD: Good morning, your Honor.

25 Janet Gold from the firm of Eisenberg, Gold &

1 Agrawal on behalf of the objector Jeffrey Palmer.

2 THE COURT: I also have a sign-in for a  
3 Ms. Waters on behalf of D.R. Horton, but you are not  
4 actually entering an appearance. You're an observer  
5 today. Is that my understanding?

6 MS. WATERS: Yes, your Honor.

7 MR. ROONEY: Gavin Rooney from Lowenstein,  
8 Sandler on behalf of Christianson and Dupree, and the  
9 same is true for my clients and myself.

10 Thank you, your Honor.

11 THE COURT: Thank you.

12 Everyone have a seat, please.

13 My understanding is that subsequent to the  
14 filing of all of the papers here when we had, for  
15 instance, Christianson and D.R. Horton submitting  
16 certain objections that those have been withdrawn at  
17 this time. Is that correct?

18 MR. GREENBERG: That's correct.

19 MR. ROONEY: That's correct, your Honor.  
20 There was a submission of a revised final approval  
21 order, Document 220 on the docket late Friday, and  
22 that resolved those objections.

23 MS. WATERS: That's the same for D.R. Horton  
24 your Honor.

25 THE COURT: All right.

1           So let me just place on the record who I  
2 understand are still the current objectors.

3           I have individuals, the Wilsons and the  
4 Collins. I understand the Andrews are out. Is that  
5 correct?

6           MR. GREENBERG: That's correct, your Honor, on  
7 all counts.

8           THE COURT: Okay.

9           And they are representing themselves as  
10 individuals with no counsel appearing on their behalf  
11 at this point. Correct?

12           MR. GREENBERG: That's correct. No counsel  
13 has appeared in the action on behalf of either  
14 Ms. Collins or the Wilsons.

15           THE COURT: And then I have Mr. Palmer who  
16 continues to object through counsel.

17           So my only current objections are the Wilsons,  
18 Collins and Palmer. Is that correct?

19           MR. GREENBERG: That's correct, your Honor.

20           THE COURT: All right.

21           Before I get going, let me also place on the  
22 record, and I think you have all been provided with a  
23 copy at this point, apparently Judge Bongiovanni filed  
24 a letter-order on Friday afternoon and because of the  
25 hour and I guess the manning of the Clerks Office

1     apparently it did not get docketed.    So you did not  
2     see it.

3             She ruled on the pro hac motion of both Mr.  
4     Bandas and Mr. Clore from the Bandas firm, and you can  
5     see from her letter-order that she denied the motion  
6     for pro hac vice status.

7             She then granted Mr. Stewart who is from a  
8     separate firm in Texas.    I don't know if you are aware  
9     of that.    There was a separate order signing off on  
10    that one.    But he is not here today, in any event.  
11    Correct?    Nope.    No Mr. Stewart.    And I haven't seen  
12    anything filed from him other than the pro hac  
13    application Ms. Gold filed on his behalf.

14            So bottom line is, Ms. Gold, you are the  
15    spokesperson for Mr. Palmer today.

16            MS. GOLD:   Thank you, your Honor.

17            THE COURT:   All right.

18            So that's where we are and that's now the  
19    limited universe of the changes that have occurred  
20    since all the papers have been filed.

21            Let me start by indicating as well that I have  
22    reviewed all of the submissions and obviously they  
23    have been trickling in through Friday and over the  
24    weekend, particularly with the Palmer situation and of  
25    course updating the Christianson and D.R. Horton and

1 the various matters that I have.

2 So my intent today is that I will rule on the  
3 record with regard to the final settlement and fees.  
4 But there will subsequently be an opinion that will be  
5 filed that will be done through -- essentially, you  
6 could call it an oral opinion. But what it is, I'm  
7 going to provide it to my court reporter who will  
8 transcribe it and you could order the transcript of  
9 it.

10 I will actually rule before you leave today so  
11 you know where you are. But I will want to make sure  
12 that all of my reasoning to the extent that any of it  
13 needs to be adjusted based on arguments I hear today  
14 incorporates all that I hear today.

15 Let's start with the objectors, and I'm not  
16 going to take a lot of argument from everyone. I have  
17 your submissions. They are lengthy. I've reviewed  
18 them. I don't need a dog and pony show today to tell  
19 me what this settlement is about. I'm very well aware  
20 of what this settlement is about and what the terms  
21 are.

22 So I think appropriately maybe what we'll deal  
23 with at the outset are the objections. Let me point  
24 out that with regard to the Wilsons and Collins, I am  
25 going to reject their reasoning. I do not find it

1 convincing. I'll put my reasons, as I said, in the  
2 opinion. They are not here to argue today. So I have  
3 no reason to take any further argument about those two  
4 objectors.

5 So let's focus for a few moments on Palmer who  
6 has created many headaches for the Court and everyone  
7 else, and all these submissions that have continued to  
8 trickle in and where we are with him.

9 I will start with some of the arguments being  
10 made as to why the Court should not consider actually  
11 the objections by Mr. Palmer based upon what have been  
12 characterized as misrepresentations or untruths in  
13 testimony that he gave with regard to having served as  
14 an objector in the past.

15 He only disclosed one prior time that he  
16 served as an objector and that was in a case involving  
17 Verizon having nothing to do with plumbing. As it  
18 turns out based upon searches that have been done, it  
19 has been submitted to me that he in fact served as an  
20 objector in two other settlements, class action  
21 settlements that involved plumbing and related issues,  
22 and indeed one of those resulted in some findings by  
23 the Court as to both counsel and Mr. Palmer.

24 I have received submissions on behalf of Mr.  
25 Palmer on Friday attempting to explain how he forgot



1 about them and he's wishing to correct his testimony.

2 I will start by saying, I find it less than  
3 credible to believe, particularly in the plumbing area  
4 which is similar to this case and issues, that that  
5 slipped his mind but some Verizon case stayed with  
6 him.

7 With regard to the Bandas firm and the failure  
8 to have uncovered the prior representation, and some  
9 arguments being made as to how this was 2012 and there  
10 is a retention policy in Texas of about 5 years, when  
11 you identify the other cases that the Bandas firm  
12 objected to there are ones that preceded that date as  
13 well. So I don't think that's the reason it was not  
14 uncovered.

15 So I've got issues of candor as to Mr. Palmer  
16 in what he has presented to the Court, and I  
17 understand that he wishes to make it right by  
18 correcting testimony. That still doesn't affect what  
19 I think about his credibility, but I'm certainly  
20 willing to hear.

21 We have also an additional issue that was  
22 raised as to his standing as to whether he actually  
23 purchased and used a NIBCO product; and then I have  
24 these affidavits that have been submitted or  
25 declarations by a Mr. McMahan who is the manager or

1 representative of the company where he made the  
2 purchases. Correct?

3 And then we have the dispute that goes back  
4 and forth as to what Mr. McMahan told Mr. Polakoff of  
5 the Berger firm about the underlying facts, and then a  
6 declaration that was actually submitted by -- he never  
7 submitted a declaration on behalf of the parties in  
8 this case, the plaintiffs. But he did submit a  
9 declaration through the proposed pro hac counsel where  
10 they take issue with the underlying facts.

11 Let me point out a couple of things. I  
12 certainly don't think even if I took your declaration  
13 at face value it proves your point as to whether in  
14 fact he purchased because even the declaration of Mr.  
15 McMahan where he also apparently then says at some  
16 point to counsel after the fact when this was done to  
17 Mr. Polakoff that Mr. Palmer remains a customer of  
18 these people and he's been instructed not to cooperate  
19 with plaintiffs' counsel in this case. Correct? And  
20 therefore did not submit a declaration.

21 But even paragraph 3 of the declaration that  
22 Palmer's counsel submits says -- he quotes the  
23 following:

24 "The Nocona Building Center has never sold  
25 NIBCO Inc. PEX products. I have no idea if Nocona

1 Building Center has sold NIBCO Inc. PEX products, and  
2 I did not tell Mr. Polakoff that I knew otherwise."

3 He still hasn't answered the question. He  
4 says, "I have no idea."

5 So he doesn't help me decide, does he, Ms.  
6 Gold, that indeed they sold NIBCO products? He didn't  
7 do a search for you either, did he?

8 MS. GOLD: No, your Honor, he did not.

9 But the way the claims process works here, our  
10 client would have standing because he testified that  
11 he purchased the NIBCO products, he remembered the  
12 word "NIBCO" on the product when he installed it, and  
13 the claim form doesn't require that the claimant  
14 produce a copy of an invoice showing that they  
15 purchased that product.

16 The invoice that was attached to the claim  
17 here, it was made clear in the objection that that was  
18 just an invoice that was for items purchased around  
19 that time, and that Jeffrey Palmer didn't know if that  
20 was the invoice for the NIBCO products.

21 But the claim form that was created here by  
22 the class or for the class allows a contractor to  
23 submit a letter saying they bought the product and  
24 that gives them standing.

25 THE COURT: Yes, but here we're going behind

1 that because now we have some other things, and  
2 particularly because of the concerns that I have  
3 raised as to the credibility of Mr. Palmer himself.

4 So while I hear you telling me he says, I  
5 remember the NIBCO name and there we are, I do have  
6 some things now behind this.

7 And then of course I have some additional  
8 information in the latest declaration from Mr.  
9 Polakoff as to doing some cross-referencing with  
10 regard to iPlumb and the numbers in their catalogs and  
11 all of that.

12 By the way, Mr. McMahan again in his  
13 declaration says that the only reason he disagrees  
14 with what Mr. Polakoff provided to him about  
15 cross-referencing item numbers is that he said: "I  
16 never got that cross-reference, so I never did it."

17 He doesn't say, It's not true. He doesn't  
18 say, I checked it after the fact and I figured it out,  
19 and, yes, it's a NIBCO product. None of that is said.  
20 So there is nothing in the McMahan declaration that  
21 actually tells me that Mr. Palmer purchased a NIBCO  
22 product from them. I don't have that. That is very  
23 clear to me.

24 Other than having Mr. Palmer tell me, I  
25 remember it saying "NIBCO" where no other

1 documentation supports that and my concerns about his  
2 credibility, why should I accept that?

3 MS. GOLD: Well, your Honor, it's the way the  
4 claim form is set up. There is no requirement that  
5 the claimant produce an invoice or a receipt for the  
6 actual product. If there's a contract or letter --

7 THE COURT: I understand. But now I have an  
8 objector, and when I have an objector I can look  
9 behind the issues. It's not just a claim form that  
10 the claims administrator is going to look at and say,  
11 I've got enough. It's okay.

12 I have an objector who wants to upend the  
13 settlement and wants to present positions, I've got  
14 someone who has been an objector in the past and was  
15 not truthful about it, and I have the question being  
16 raised. Ultimately, I don't know that I can decide  
17 today whether he bought the NIBCO product or not for  
18 standing purposes.

19 I have your affidavit, Mr. Polakoff, as to  
20 what you've checked with other people. Some of that  
21 is hearsay, obviously. But certainly what I've got  
22 from McMahan does not satisfy that he bought. But  
23 I'll put aside for the moment the standing question  
24 because I don't know that I can use all of that  
25 definitively today.

1           What else do you want to say about Mr. Palmer?

2           MS. Gold: Your Honor, I think our objection  
3 that we filed was pretty thorough. I just want to  
4 highlight a few points, if that's okay.

5           THE COURT: Don't repeat things. Go ahead.

6           MS. GOLD: Our concern is that we have roughly  
7 a \$3 million class benefit right now and a \$13 million  
8 requested fee, and that we believe under the Baby  
9 Products case and Amended Rule 23 that that's not the  
10 way these should play out versus the amount of the  
11 class benefit.

12           THE COURT: The class benefit at the moment is  
13 based upon claims that were received up to date. It's  
14 not what's going to be received, and there is a period  
15 of time, a substantial period of time that this will  
16 remain open.

17           The fact that that's what we got in a very  
18 short period of time responding doesn't mean that's  
19 the class benefit. Let's be clear. The money that's  
20 been set aside is substantial, and based on the 6-year  
21 period it permits up to a 70 percent payout.

22           It's only initially starting at 25 percent to  
23 make sure that all class members who do file claims  
24 can have enough money to get it and then it could be  
25 increased. So saying it's a \$3 million benefit is

1 really not accurate at all.

2 MS. GOLD: Well, as of today. But the initial  
3 payment here is 25 percent, which we think is going to  
4 dampen interest in participating in the class, thereby  
5 keeping the overall claim --

6 THE COURT: Well, it hasn't dampened some 800  
7 people already who have filed claims, has it?

8 MS. GOLD: Right. There has been roughly 758  
9 claims and a hundred plus opt outs. So there has been  
10 a fairly large number of opt outs as well in the  
11 class. We just don't believe that there is going to  
12 be 10 to 25 times the number of claims that there are  
13 to date.

14 And if the class is waiting for 6 years to get  
15 their payment, shouldn't some of the fee be deferred  
16 as well? So that there is actually sufficient funds  
17 to pay everything in full and it's not lopsided so  
18 that the fees are so much higher than the claims.

19 THE COURT: I don't think there is any  
20 anticipation that there will not be adequate funds to  
21 pay the claims.

22 Anything else you want to add? I've seen  
23 those arguments in your papers.

24 MS. GOLD: Okay. We just had a question  
25 about, if there is excess fees that are not awarded,

1 they should be allowed to go to the class.

2 THE COURT: You mean if I accept your  
3 objection that the amount of fees being paid is  
4 excessive and I cut the fee, it should go into the  
5 fund.

6 MS. GOLD: Right.

7 THE COURT: The fund is the fund. That's the  
8 way it would work anyway. This is just a request to  
9 pay a certain percentage out of the fund. The fund is  
10 not going to be decreased.

11 Anything else?

12 MS. GOLD: No. That's it. Thank you.

13 THE COURT: Mr. Greenberg.

14 MR. GREENBERG: Your Honor, very briefly,  
15 since I know your Honor has read the papers, I want to  
16 respond to your Honor's questions. But, firstly, I  
17 would like to address the factual issue of whether Mr.  
18 Palmer had any NIBCO products. Your Honor has  
19 adverted to that, and I won't go over any of the  
20 things that your Honor mentioned.

21 But one other thing that's in the record is  
22 ECF 212, and I know your Honor has read it, is my  
23 declaration where we demonstrated affirmatively  
24 through a catalog and through websites that each of  
25 the four products that were reflected as purchased in



1 the invoice that Mr. Palmer submitted as the only  
2 evidence of his potential ownership of NIBCO products,  
3 those sources conclusively demonstrate that each of  
4 the four products are not NIBCO products.

5 And so, as a matter of fact, we would urge  
6 your Honor to find at the threshold that Mr. Palmer  
7 has no right to be here because he has no NIBCO  
8 products.

9 We would then following on that urge your  
10 Honor to as well reject his objections on the merits  
11 as though he has the right to be here because there is  
12 the possibility given the track record of some  
13 involved that this may not be the last stop on this  
14 train and we know that your Honor prefers to be clear  
15 and will --

16 THE COURT: I will address the objections  
17 regarding my findings on standing. I do intend to do  
18 so. I like my alternative bases.

19 MR. GREENBERG: Thank you very much, your  
20 Honor.

21 On the issue that you just heard about a  
22 comparison between claims and opt outs, as of the most  
23 recent report that we received from Angeion, there are  
24 now 951 facially valid claims, and another 200, almost  
25 200 since we submitted the papers to your Honor.

1 Obviously, claims are continuing and they will  
2 continue to continue as your Honor indicated.

3 THE COURT: You have a 150-day period.  
4 Correct?

5 MR. GREENBERG: Exactly, for people with past  
6 issues, and obviously the 6-year claim period for  
7 those whose products will fail in the interim.

8 The comparison that you heard between the  
9 number of claims and the number of opt outs is a  
10 fallacious comparison. Opt outs were required to make  
11 themselves known by a deadline that your Honor set in  
12 the preliminary approval order, and so they did.  
13 There is a relative handful, it's not even a handful,  
14 of 112 out of hundreds of thousands of properties that  
15 have these products in them.

16 In comparison, as your Honor just indicated,  
17 people with past damages have 150 days from the  
18 effective date. People are not necessarily rushing  
19 now to file claims because they know that this hearing  
20 was not going to occur until today. So certainly as  
21 your Honor indicated there will be many more claims  
22 and the comparison of opt outs and claims is a purely  
23 fallacious one.

24 THE COURT: Normally, the comparison is opt  
25 outs versus potential claims, not those who are

1 actually claiming, and I understand the number is  
2 significant and a hundred plus out of that number is  
3 considered a very small amount.

4 MR. GREENBERG: Yes, it is your Honor.

5 I can address any of Mr. Palmer's objections  
6 that your Honor has questions about, but I know your  
7 Honor has read the papers and I don't want to belabor  
8 things.

9 THE COURT: I don't need to address them.

10 MR. GREENBERG: If your Honor has no questions  
11 of me, I will sit down.

12 Thank you.

13 THE COURT: Thank you.

14 As I said, I'll include my reasoning in the  
15 opinion to be filed. But I can let everyone know that  
16 having carefully reviewed all the papers that have  
17 been filed by Mr. Palmer, I am going to reject his  
18 objection. My reasoning will appear in full.

19 And with that, I've already indicated on  
20 Collins and the Wilsons who are not here today. I  
21 have reviewed their objections and they are going to  
22 be rejected as well.

23 MR. COONEY: Your Honor, Gordon Cooney for  
24 NIBCO. If I could just add one other observation  
25 relevant to the Palmer claim?

1 THE COURT: Sure.

2 MR. COONEY: Mr. Greenberg identified a number  
3 of the reasons why it would be appropriate both to  
4 reject the merits of the objection, but also to find  
5 that Mr. Palmer did not have NIBCO products.

6 In addition to the things that have been  
7 identified, it's not nearly the lack of candor with  
8 regard to disclosing the two prior plumbing  
9 settlements.

10 It's that in the Uponor case that we  
11 identified for your Honor, as your Honor noted, the  
12 court found the Palmers to be acting in bad faith; and  
13 in that case, like this case, Palmer took the position  
14 that the product he had was the product at issue, and  
15 the court found as a matter of fact that it was not.

16 THE COURT: It seems to be a pattern. I  
17 understand.

18 MR. COONEY: The failure to disclose that  
19 under those circumstance along with the other issues  
20 that have been presented including the receipts and  
21 the establishment that the products at least listed in  
22 the receipts are not NIBCO products, we think gives  
23 you a sufficient basis as a matter of fact to find  
24 that Mr. Palmer doesn't have standing, your Honor.

25 THE COURT: I think it's a convincing

1 argument.

2 Having resolved the objections, is there  
3 anything that anyone wants to place on the record  
4 additionally with regard to the request to approve the  
5 settlement?

6 I would like to have the numbers again as of  
7 today so I can update on the number of claims, if you  
8 could tell them to me one more time, that have been  
9 filed to this point.

10 MR. GREENBERG: Your Honor, there are 951  
11 facially valid claims as of the report that we  
12 received from Angeion on April 4th, which was late  
13 last week. There may be more as of today, but that's  
14 the latest report that we have.

15 By "facially valid" we are excluding the 88  
16 claims that came from a known fraud doer, and one  
17 claim for several million dollars that Angeion has  
18 held in suspension because it appears that it may not  
19 be a valid claim.

20 THE COURT: Thank you.

21 Is there anything else that you need to update  
22 on numbers or otherwise since your last submission?

23 MR. GREENBERG: I don't think there is, your  
24 Honor.

25 MR. COONEY: Your Honor, I think there is one

1 issue, just a housekeeping issue, on what is  
2 referenced in your Honor's order as Appendix A, which  
3 is the opt out list. There are one or two things that  
4 need to be done to make sure that that's complete.

5           Aside from that, I don't think there are any  
6 other housekeeping issues or updating issues.

7           MR. GREENBERG: We agree, your Honor.

8           THE COURT: All right.

9           I won't keep you in suspense. I do intend to  
10 issue, as I said, I'll call it an oral opinion. I  
11 used to sit here and actually read them into the  
12 record making me tired and everyone else in the  
13 courtroom, especially when it numbers over 50 pages.

14           So I will provide it to my court reporter.  
15 But I do want to do some tweaking on it based upon  
16 some late submissions that were presented here today  
17 and updating. So I'm not telling you that's going to  
18 be available today.

19           I will tell you that I am going to approve the  
20 settlement in the form that's been provided to me as  
21 the final settlement, and I am going to approve the  
22 attorney's fees and costs as well.

23           For those of you who have appeared before me  
24 in other class action settlements, and I'm not sure  
25 that any of you have except for perhaps Mr. Greenberg,

1 I tend to do a fairly searching view of attorney's  
2 fees and I have been known to cut attorney's fees in  
3 the past.

4 In this particular case on the percentage of  
5 the recovery in the fund given all of the work that  
6 was done, and this really went down the line with  
7 many, many depositions, experts. Sometimes I get  
8 settlements that are very early in the case and I  
9 don't quite think the fee being requested is  
10 appropriate and on a percentage, particularly on the  
11 lodestar cross-check, I look more searchingly at the  
12 lodestar cross-check as well.

13 But in this case knowing having been involved  
14 in the opinions that's have been filed and what's been  
15 done, I'm well aware of the work that went into it,  
16 all the efforts that were undertaken by counsel, and  
17 the difficulty with some of the issues and you having  
18 to call in essentially a second mediator to deal with  
19 some of the insurance issues that were involved.

20 In this case certainly the percentage being  
21 requested falls within what is acceptable in many  
22 other cases. I find it appropriate in this case and I  
23 am going to award it as well. So I don't want to keep  
24 anyone in suspense. That's why I'm letting you know  
25 that today.

1 I'm making no promises on behalf of my court  
2 reporter as to when the transcript will be available.  
3 So instead of bothering him, how about if you give him  
4 your cards and he'll alert you when it's available.

5 Anything else we need to put on the record?

6 MR. GREENBERG: No, your Honor.

7 MR. COONEY: No, your Honor.

8 THE COURT: I do want to make a comment. I  
9 will address Mr. Palmer in the opinion and  
10 particularly counsel that seeks to represent him as  
11 they did in this matter.

12 This is a tortured history between his own  
13 brother who's suspended that served as an attorney  
14 with the Bandas firm, and for them to indicate that  
15 they didn't remember this or it fell between the  
16 cracks when it was Mr. Palmer who brought it into the  
17 case with Mr. Bandas, the whole thing is just alarming  
18 to me as to the attorney activity apart from Mr.  
19 Palmer's own and the connection between them.

20 So I hope that in the future Mr. Palmer thinks  
21 long and hard when he he becomes an objector because  
22 he will have to deal with some of what I have to say  
23 in my opinion, and that goes as well for the Bandas  
24 law firm. I have found it very disturbing.

25 That's all I wanted to add on the record. If



1 there is nothing else, thank you, everybody, very much  
2 for your submissions up to the last minute.

3 THE DEPUTY CLERK: All rise.

4 (Proceedings concluded.)

5

6 **(The following is Judge Wolfson's oral opinion**  
7 **in full. Footnotes will follow the content of the**  
8 **opinion)**

9

10 Before the Court are Plaintiffs' motion for  
11 final approval of class action settlement, and their  
12 motion for attorneys' fees, costs/expenses, and class  
13 representatives incentive awards. This settlement will  
14 resolve all claims asserted against Defendant NIBCO,  
15 Inc. ("NIBCO" or "Defendant"). For the reasons set  
16 forth below and on the record at the hearing held on  
17 April 8, 2019, the parties' joint motion for final  
18 approval of settlement is granted, the Court certifies  
19 the proposed settlement class, designates Plaintiffs'  
20 counsel as class counsel, and the Court approves the  
21 final settlement.

22 Additionally, I approve for the Coles, Mr.  
23 Monica, Ms. Boyd, Mr. McMahon, Mr. Sminkey, the  
24 Medders, the Pepernos, Mr. McCoy, the Pliskos, and Mr.  
25 McLaughlin, an incentive award of \$10,000 each, or for