

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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MILTON LILLY and DONALD GROGAN, on )  
behalf of themselves and a class of persons )  
similarly situated, ) Case No. 6:07-cv-00340 (NPM/ATB)  
Plaintiffs,)  
vs. )  
ONEIDA LTD. EMPLOYEER BENEFITS )  
ADMINISTRATIVE COMMITTEE et al., )  
Defendants.)  
\_\_\_\_\_)

**PLAN OF ALLOCATION**

**I. Definitions.**

A. Capitalized terms used herein shall have the meanings ascribed to them in the Class Action Settlement Agreement dated June 4, 2010 (“Settlement Agreement”), or in this Plan of Allocation. The following definitions shall apply to the Plan of Allocation methodology:

1. **“Aggregate Net Loss”** shall mean the total of all Members’ Net Losses.
2. **“Current Plan Participant”** shall mean: (i) a Member who as of the Reference Date has an account in the Oneida Ltd. Profit Sharing/401(k) Plan; or (ii) a beneficiary or beneficiaries of such a Member.
3. **“Distribution Amount”** shall mean the Net Proceeds of the Settlement Fund. The sum of each Member’s Dollar Recovery must equal the Distribution Amount.

4. **“Dollar Recovery”** for each Member shall mean the Member’s Net Loss Fractional Share multiplied by the Distribution Amount.

5. **“Former Plan Participant”** shall mean (i) a Member who, as of the Reference Date, is not a Current Plan Participant; or (ii) a beneficiary or beneficiaries of such a Member.

6. **“Member”** shall mean a member of the Settlement Class who is a Current Plan Participant or Former Plan Participant and whose Oneida Ltd. Employee Stock Ownership Plan account held any Oneida Ltd. common stock during the Class Period, provided that “Member” shall not include any of the individual named defendants in this action.

7. **“Member’s Net Loss”** shall mean:  $A + B - C - D$ , provided that if  $A + B - C - D$  is less than zero for a Member, such Member’s Net Loss will be zero.

A = the dollar amount of the Member’s Oneida Ltd. Employee Stock Ownership Plan account balance invested in Oneida Ltd. common stock at the beginning of the Class Period.

B = the dollar amount added to the Member’s Oneida Ltd. Employee Stock Ownership Plan account balance that was invested in Oneida Ltd. common stock during the Class Period, valued as of the time of each such investment as reflected in the records of the Oneida Ltd. Employee Stock Ownership Plan.

C = the dollar amount credited to the Member’s Oneida Ltd. Employee Stock Ownership Plan account balance resulting from dispositions of Oneida Ltd. common stock during the Class Period, valued as of the time of the disposition, as reflected in the records of the Oneida Ltd. Employee Stock Ownership Plan.

D = the dollar amount of the Member’s Oneida Ltd. Employee Stock Ownership Plan account balance invested in Oneida

Ltd. common stock immediately after the end of the Class Period.

**8. “Net Loss Fractional Share”** shall mean each Member’s Net Loss divided by the Aggregate Net Loss.

**9. “Reference Date”** means the date for determination of whether a Member is a Current Plan Participant and shall be the same date as the Members’ deadline for Election of Optional Forms of Benefit.

**10. “Unlocatable Member”** shall mean a Member who, despite reasonable efforts, cannot be located by the Trustee within a reasonable time.

## **II. Recitals**

WHEREAS in consideration of, and expressly in exchange for, all of the promises and agreements set forth in the Settlement Agreement, whereby Defendants, inter alia, shall cause Federal Insurance Company to deposit the sum of one million, eight hundred fifty thousand dollars (\$1,850,000) (the “Cash Amount”), into the Settlement Fund Account; and

WHEREAS Named Plaintiffs on behalf of themselves and the Settlement Class have agreed to accept the Cash Amount in settlement of their claims that various tangible retirement benefits other than the monthly retirement benefit provided by the Retirement Plan were lost when the Plan’s value was allegedly all but destroyed by the alleged actions (or inactions) of Defendants, which allegedly included: (i) loss of the right to have benefits from the Plan paid in the form of a lump sum upon retirement or employment termination; (ii) loss of the right of married participants to make a unilateral election to take a lump sum distribution from the Plan; (iii) loss of the right to use a lump sum distribution to purchase an annuity on the open market which was higher than the annuity offered by the Retirement Plan; (iv) loss of the ability to exceed the minimum

monthly Retirement Plan benefit if the Plan's annuity amount exceeded the guaranteed Retirement Plan benefit; and (v) loss of the right of non-vested participants to receive any recovery because non-vested participants did not receive any benefits when the Retirement Plan was terminated.

NOW, THEREFORE, A.B. Data, Ltd. is directed to calculate the Distribution Amount as set forth in Section III and the Trustee is directed to allocate the Distribution Amount as set forth in Section IV.

**III. Calculation of Each Member's Share of the Distribution Amount.**

- A. For each Member there shall be calculated the Member's Net Loss.
- B. The Aggregate Net Loss shall then be calculated.
- C. Each Member's Net Loss Fractional Share shall then be calculated.
- D. Each Member's Dollar Recovery shall then be calculated.
- E. Any portion of the Distribution Amount due to Unlocatable Members shall be distributed to Members that can be located, *pro rata*.
- F. All calculations required to implement this Plan of Allocation shall be performed by A.B. Data, Ltd. A.B. Data, Ltd. shall provide Named Plaintiffs' with a document that contains each Member's Dollar Recovery, which Named Plaintiffs' Counsel will provide the Trustee.

**IV. Distribution of the Allocated Amounts.**

- A. If the Distribution Amount cannot be immediately distributed at the time it is provided to the Trustee, the Trustee shall place the Distribution Amount in the Oneida Ltd. Profit Sharing/401(k) Plan Master Trust and invest the Distribution Amount in short term (30 day) T-bills.

**B.** Current Plan Participants. The Trustee shall deposit into each Current Plan Participant's account the Member's Dollar Recovery as calculated above, plus any accumulated interest. The deposited amount shall be allocated among the Current Plan Participant's investment options in accordance with the Member's investment elections for current contributions into the Plan then in effect and treated thereafter for all purposes under the Plan as assets of the Plan properly credited to that Current Plan Participant's account.

**C.** Former Plan Participants. The Trustee shall allocate the Former Plan Participant's Dollar Recoveries, plus interest, in the same manner as a qualified distribution from the Plan pursuant to ERISA and the Internal Revenue Code as follows:

**1.** The Trustee shall issue a check for the Dollar Recovery, plus interest, less required withholdings and the appropriate tax forms to Former Plan Participants who have Dollar Recoveries, plus interest, that total \$1,000 or less.

**2.** Named Plaintiffs' Counsel shall provide Former Plan Participants a copy of the Election Form, as approved by the Court with such non-substantive modifications thereto as may be agreed upon by the Parties, to Former Plan Participants who have Dollar Recoveries, plus interest, that total more than \$1,000. After 30 days from the date that Named Plaintiffs' Counsel provided such Former Plan Participants with the Election Form, the Trustee shall:

**a.** issue a check for the Dollar Recovery, plus interest, less required withholdings and the appropriate tax forms to Former Plan Participants who have not timely sent an Election Form or who have elected an immediate distribution by check; or

b. rollover to a no-fee Fidelity IRA the Dollar Recovery, plus interest, of each Former Plan Participant who has timely sent an election form electing to rollover the Dollar Recovery. The Trustee shall invest the each such Dollar Recovery in a no-fee Fidelity IRA on a cash reserves basis in short-term securities and money-market instruments that seek to preserve the value of the investment while retaining liquidity.

**V. Continuing Jurisdiction**

The Court will retain jurisdiction over this Plan of Allocation to the extent necessary to ensure that it is fully and fairly implemented.