

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

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)	
MAKOR ISSUES & RIGHTS, LTD., <i>et al.</i> ,)	
)	
Plaintiffs,)	Case No. 02-C-4356
)	
vs.)	Honorable Amy J. St. Eve
)	
TELLABS, INCORPORATED, MICHAEL J.)	
BIRCK, RICHARD C. NOTEBAERT, <i>et al.</i> ,)	
)	
Defendants.)	
)	
	X	

STIPULATION AND AGREEMENT OF SETTLEMENT

This Stipulation and Agreement of Settlement (the “Stipulation”) is entered into, subject to the approval of the Court, by (i) Lead Plaintiff and Class Representative Makor Issues & Rights, Ltd., and Class Representatives Nolan Howell and Richard LeBrun (“Class Representatives”), on behalf of themselves and the Class certified herein (as defined below, including additional named plaintiffs Chris Broholm and David Leehey, which additional named plaintiffs are referred to herein collectively with the Class Representatives as “Plaintiffs”), by and through their counsel, and (ii) Defendants Tellabs, Inc. (“Tellabs”), Michael J. Birck, Richard C. Notebaert, Joan E. Ryan, and Brian Jackman (the “Individual Defendants”) (Tellabs and the Individual Defendants are collectively referred to hereinafter as the “Defendants”), by and through their counsel.

WHEREAS:

A. On or after June 18, 2002, several putative securities fraud class actions were filed against Tellabs, Inc. (“Tellabs”) and certain of its officers and directors. By Minute Order dated

September 17, 2002, the Court consolidated these actions under the above caption, which is hereinafter referred to as the “Action” (and which includes any and all actions that were consolidated therein). Makor Issues & Rights, Ltd. was designated Lead Plaintiff pursuant to the Private Securities Litigation Reform Act of 1995 (“PSLRA”) by Memorandum Opinion and Order of the Court on September 26, 2002. The Court approved Lead Plaintiff’s selection of the law firm now known as Milberg LLP as Lead Counsel for the Class;

B. On December 3, 2002, Plaintiffs filed their Consolidated Amended Class Action Complaint naming as defendants Tellabs, Michael J. Birck, J. Thomas Gruenwald, Brian J. Jackman, John Kohler, Catherine Kozik, Richard C. Notebaert, Robert Pullen, Joan E. Ryan, William F. Sounders, and John Vaughn and alleging violations of Sections 10(b), 20(a), and 20A of the Securities Exchange Act of 1934 (the “Exchange Act”) and Rule 10b-5. All defendants moved to dismiss. On March 19, 2003, the Court granted Plaintiffs’ motion to voluntarily dismiss John Vaughn. By Memorandum Opinion and Order dated May 19, 2003, the Court dismissed the Consolidated Amended Class Action Complaint in its entirety, but without prejudice.

C. On July 11, 2003, Plaintiffs filed their Second Consolidated Amended Class Action Complaint (the “Complaint”), naming as defendants Tellabs, Michael J. Birck, Brian Jackman, John Kohler, Richard C. Notebaert, Robert Pullen, and Joan E. Ryan. All defendants moved to dismiss. On February 19, 2004, the Court dismissed the Complaint in its entirety with prejudice.

D. Plaintiffs did not appeal the dismissal of the claims against John Kohler and Robert Pullen but appealed the dismissals as to other defendants. After extensive appellate proceedings in the United States Court of Appeals for the Seventh Circuit and the United States

Supreme Court, there remained pending certain Section 10(b) claims against Defendants Tellabs and Notebaert and certain Section 20(a) claims against Birck, Jackman, Notebaert, and Ryan, with the adequacy of the remaining Section 20A claims remanded to the Court for further consideration. On May 22, 2008, the Court issued an order granting dismissal of the Section 20A claims.

E. As a result of these proceedings, certain specific statements made during the period from December 11, 2000 through June 19, 2001, and alleged to have been false or misleading, remained at issue. These statements were identified in a Joint Status Report submitted by the parties on February 25, 2008, and fell into four categories: (1) certain statements announcing Tellabs' financial results for the fourth quarter of 2000 and for the full year 2000; (2) certain projections issued by Tellabs during the period; (3) certain statements regarding Tellabs' TITAN 6500 product; and (4) certain statements regarding Tellabs' TITAN 5500 product.

F. By Memorandum Opinion and Order dated February 23, 2009, the Court granted Plaintiffs' motion for class certification, and appointed Makor Issues & Rights, Ltd., Nolan Howell and Richard LeBrun as Class Representatives. The Class was defined as follows:

All persons who purchased the common stock of Tellabs, Inc. during the period from December 11, 2000 through June 19, 2001, inclusive (the "Class"). Excluded from the Class are: Defendants; the subsidiaries and affiliates of Tellabs; the officers and directors of Tellabs or its subsidiaries and affiliates, at all relevant times; members of the immediate family of any excluded person; the legal representatives, heirs, successors, and assigns of any excluded person; and any entity in which any excluded person has or had a controlling interest.

G. As described in the July 28, 2010 Affidavit of Richard W. Simmons Re: (A) Mailing of Notice of Pendency, and (B) Report on Exclusion Requests Received (Docket No.

375), Notice of the Pendency of this Action as a Class Action (“Notice of Pendency”) was provided to the Class, and 93 requests for exclusion were received.

H. During the pendency of the Action, a lawsuit captioned *Don Brieger, et al. v. Tellabs, Inc., et al.*, No. 06 C 1882 (N.D. Ill.) (the “*Brieger* Action”), also proceeded. The *Brieger* Action involved some of the same factual allegations as this Action but was brought under the Employee Retirement Income Security Act (“ERISA”), 29 U.S.C. §§1109 and 1132, on behalf of a class defined as “[a]ll persons who were participants or beneficiaries of the Tellabs, Inc. Profit Sharing and Savings Plan at any time between December 11, 2000 and July 1, 2003 and whose accounts included investments in Tellabs stock.” After completion of extensive discovery in the *Brieger* Action, and following denial of defendants’ motion for summary judgment, a bench trial of the claims in that case was held. On June 1, 2009, the court presiding over the *Brieger* Action issued an opinion and judgment finding in favor of all defendants on all claims that had been advanced in the *Brieger* Action, including all claims of misrepresentations.

I. Extensive discovery in this Action occurred and was completed, including numerous depositions. In addition, the parties submitted conflicting expert reports on issues of both liability and damages.

J. Plaintiffs’ damages expert estimated per share damages in the amount of \$10.02 per share for those members of the class who made purchases of Tellabs’ stock from December 11, 2000 through April 5, 2001; \$5.07 per share for those class members who made purchases of Tellabs’ stock from April 6 through June 19, 2001; with an average of \$8.09 in daily per share damages during the class period. Plaintiffs’ damages expert also stated that, with respect to the transactions made during the entire December 11, 2000 through June 19, 2001 Class Period, her “conservative estimate of total damages in this matter is \$1,262,669,239.” As indicated below,

the Court subsequently entered Summary Judgment eliminating all claims on transactions made prior to March 8, 2001, and dismissed many of the claims on transactions made during the rest of the Class Period. Defendants' damages expert criticized the methodologies utilized by Plaintiffs' damages expert, and opined as to a lack of any adequately demonstrated loss causation, but did not offer any specific alternative damages estimates.

K. Following the close of discovery in the Action, Defendants moved for summary judgment on all claims and also moved to strike the opinions of Plaintiffs' liability expert.

L. On June 23, 2010, after briefing and a hearing, the Court issued a Memorandum Opinion and Order granting, in significant part, Defendants' motion to strike the opinions of Plaintiffs' liability expert.

M. On August 13, 2010, the Court issued a Memorandum Opinion and Order which granted in large part and denied in part Defendants' motion for summary judgment. As a result of this ruling, three of the categories of alleged misstatements which had remained in the case were disposed of by the Court in favor of Defendants, including the remaining claims of alleged misstatements regarding (1) Tellabs' fourth quarter 2000 and full year 2000 financial results, (2) projections made by Tellabs at various times during the Class Period (including on December 11, 2000, January 25, 2001, March 7, 2001, and April 18, 2001), and (3) the TITAN 6500 product. In addition, the Court, among other things, granted summary judgment with respect to Plaintiffs' claim of an alleged misstatement on April 6, 2001. The Court found factual issues remained only with respect to two statements relating to Tellabs' TITAN 5500 product: (1) a March 7, 2001 statement made during an analysts' conference call, and (2) a statement contained in Tellabs' March 14, 2001 Annual Report.

N. On November 3, 2010, as a result of the Court's Order on Defendants' Motion for Summary Judgment, the Court issued an Order that modified the Class Period, for the purposes of trial only, to be "during the period from March 8, 2001 through June 19, 2001 inclusive" (the "Modified Class Period"). In a Clarifying Order dated November 23, 2010, the Court stated that:

The Court's November 3, 2010 Order was not intended to and does not de-certify the portion of the Class pre-dating March 8, 2001 that was originally certified in the Court's February 23, 2009 order. Rather as a result of the Court's August 13, 2010 Memorandum Opinion and Order granting in large part Defendants' Motion for Summary Judgment (R. 379) summary judgment is entered against the following members of the Class: All members of the Class whose claims are based on purchases of the common stock of Defendant Tellabs, Inc. from December 11, 2000 through March 7, 2001. The Modified Class Period is only intended to define the period that remains at issue for trial.

The Clarifying Order further noted that:

all members of the Class who were also members of the class certified in *Brieger v. Tellabs, Inc.*, Case No. 06-cv-1882 (N.D.Ill.) are collaterally estopped with respect to claims relating to the two statements that remain at issue in this case

The Court also set a date for trial of the Action in September 2011.

O. In light of the Court's summary judgment rulings, a supplemental damages report was submitted on December 20, 2010 by Plaintiffs' damages expert. The supplemental damages report stated that daily per share damages were \$10.26 per share for those persons purchasing Tellabs stock for the period of March 8 through April 5, 2001, and were \$5.02 per share for persons purchasing thereafter up through June 19, 2001. At a hearing in the Action, Defendants informed the Court and Plaintiffs that they intended to move to strike the opinions of Plaintiffs' damages expert, and the Court established a schedule with respect to the filing of such an anticipated motion by Defendants.

P. On various occasions during the course of the litigation of the Action, the parties unsuccessfully conducted discussions regarding the possibility of a settlement. In early 2009, the parties agreed to retain Edward A. Infante, (retired) Chief Magistrate Judge of the U.S. District Court, Northern District of California, to act as a mediator for purposes of conducting settlement discussions and arm's length negotiations. A mediation session was held in San Francisco with Judge Infante on March 18, 2009, together with subsequent conversations. These efforts did not prove successful.

Q. Following the Court's issuance of its summary judgment rulings in the Action, the parties agreed to recommence the mediation with Judge Infante. An in-person mediation conference was held in San Francisco on November 8, 2010, and Judge Infante subsequently conducted telephonic conversations with each side. On December 21, 2010, Judge Infante made a "mediator's proposal" to both sides, the terms of which are reflected in and consistent with this Settlement Agreement. On December 22, 2010, counsel for Plaintiffs and counsel for Defendants each separately informed Judge Infante of his side's acceptance of the proposal (subject to agreed documentation and court approval), and Judge Infante, in turn, informed all the parties of their respective acceptances.

R. The Defendants vigorously deny and disclaim any wrongdoing or liability whatsoever, including denying any and all claims of liability or wrongdoing and all charges and allegations that have been asserted against them, but have determined to enter into this settlement on the terms and conditions set forth herein to halt the substantial expense that continues to be attendant to the litigation, as well as to eliminate uncertainty and risks from continued litigation.

S. The Class Representatives have agreed to settle their claims and the claims of the Class, upon the terms and conditions set forth herein after and as a result of extensive

investigation, pretrial discovery and litigation, and research by Plaintiffs' Lead Counsel of the facts and law applicable to the claims underlying the Action and potential defenses thereto.

Based upon their investigation and pretrial discovery as set forth above, the Class Representatives and Plaintiffs' Lead Counsel have concluded that the terms and conditions of this Stipulation are fair, reasonable and adequate to Plaintiffs and the Class, and are in their best interests, and have agreed to settle the claims raised in the Action pursuant to the terms and provisions of this Stipulation, after considering, among other things: (a) the benefits that Plaintiffs and the members of the Class will receive from settlement of the Action, (b) the attendant risks and delays of litigation, and (c) the desirability of permitting the Settlement to be consummated as provided by the terms of this Stipulation.

T. The Class Representatives and Defendants (collectively, the "Parties" and each a "Party") and their respective counsel acknowledge that this Stipulation is a result of intensive and prolonged arm's-length negotiations between the Settling Parties.

NOW THEREFORE, in consideration of the promises and agreements, covenants, representations, and warranties set forth herein, intending to be legally bound, it is hereby STIPULATED AND AGREED, by and among the Parties to this Stipulation, through their respective attorneys, that this Action and all Released Claims (as defined below) as against the Released Parties (as defined below) and all Settled Defendants' Claims (as defined below) are to be finally and fully settled and compromised and that this Action shall be dismissed with prejudice and without costs, subject to approval of the Court pursuant to Rule 23 of the Federal Rules of Civil Procedure, upon and subject to the following terms and conditions:

CERTAIN DEFINITIONS

1. As used in this Stipulation, the following terms shall have the following meanings:

(a) “Authorized Claimant” means a Class Member who submits a timely and valid Proof of Claim form to the Claims Administrator.

(b) “Cash Settlement Amount” means the amount specified in ¶ 4 hereof.

(c) “Claims Administrator” means the firm of Analytics Incorporated, or whatever other person or entity is approved by the Court to serve as Claims Administrator and perform the administrative functions assigned to the Claims Administrator under this Stipulation.

(d) “Class” means: All persons who purchased the common stock of Tellabs, Inc. during the period from December 11, 2000 through June 19, 2001, inclusive (the “Class”). Excluded from the Class are: Defendants; the subsidiaries and affiliates of Tellabs; the officers and directors of Tellabs or its subsidiaries and affiliates, at all relevant times; members of the immediate family of any excluded person; the legal representatives, heirs, successors, and assigns of any excluded person; and any entity in which any excluded person has or had a controlling interest. Also excluded from the Class are the persons and entities who requested exclusion in response to the Notice of Pendency as shown in Exhibit D to the July 28, 2010 Affidavit of Richard W. Simmons (Docket No. 375). “Class Member” means a member of the Class.

(e) “Class Period” means the period from December 11, 2000 through June 19, 2001, inclusive.

(f) “Court” means the United States District Court for the Northern District of Illinois, and the judge thereof presiding over the Action.

(g) “Defendants” means Tellabs and the Individual Defendants.

(h) “Defendants’ Counsel” means the law firm of Sidley Austin LLP.

(i) “Escrow Agent” means US Bank, or whatever other person or entity is approved by the Court to act as escrow agent for any portion of the Settlement Fund deposited in, remaining or accruing in an escrow account pursuant to this Stipulation. Any fees or expenses charged by the Escrow Agent shall be payable from the Settlement Fund.

(j) “Effective Date” means the date upon which the Order and Final Judgment becomes Final. Any proceeding or order, or any appeal or petition for a writ of certiorari or other form of review pertaining solely to any plan of allocation, Proof of Claim determination, and/or application for attorneys’ fees, costs or expenses or payment to Lead Plaintiff or other Class Representatives, and not challenging the merits of this Settlement or any of the relief to be granted to Defendants or the Released Parties hereunder, shall not in any way delay or preclude the Order and Final Judgment from becoming Final and achieving its Effective Date.

(k) “Final” means the date when an order is no longer subject to appeal or review (or to further appeal or review, including but not limited to petitions for rehearing or a writ of certiorari), whether by exhaustion of any possible appeal, affirmance, lapse of time or otherwise.

(l) “Gross Settlement Fund” means the Cash Settlement Amount to be deposited in the Escrow Account plus any income or interest earned thereon in the Escrow Account.

