

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

David Kinder, Tracy Scott, Elbert Peay, and Cherry Crawford, individually and as representatives of a class of similarly situated persons, and on behalf of the Georgia Pacific LLC Hourly 401(k) Plan, the Georgia Pacific LLC 401(k) Retirement Savings Plan, and the Koch Industries Inc. Employees' Savings Plan,

Plaintiffs,

v.

Koch Industries, Inc., Koch Business Solutions, LP, the Koch Benefits Administrative Committee, and John Does 1-30,

Defendants.

Case No. 1:20 cv 02973 MHC

**NOTICE OF CLASS ACTION SETTLEMENT AND FAIRNESS HEARING**

**PLEASE READ THIS SETTLEMENT NOTICE CAREFULLY.**

**This is a notice of a proposed class action settlement in the above-referenced lawsuit. Your legal rights may be affected if you are a member of the following Settlement Class:**

All participants and beneficiaries of the Georgia-Pacific LLC Hourly 401(k) Plan, the Georgia-Pacific LLC 401(k) Retirement Savings Plan, and the Koch Industries Inc. Employees' Savings Plan at any time between July 16, 2014 and December 31, 2020.

- The Court has given its preliminary approval to a proposed class action settlement (the "Settlement"), in a lawsuit brought by certain participants in the Georgia-Pacific LLC Hourly 401(k) Plan, the Georgia-Pacific LLC 401(k) Retirement Savings Plan, and the Koch Industries Inc. Employees' Savings Plan (collectively, the "Plans") against Koch Industries, Inc., Koch Business Solutions, LP, and the Koch Benefits Administrative Committee (collectively, "Defendants"), alleging violations of the Employee Retirement Income Security Act of 1974, as amended ("ERISA") in relation to the management of the Plans. Defendants deny all claims, and nothing in the Settlement is an admission or concession on Defendants' part of any fault or liability whatsoever.
- The Settlement will provide, among other things, for payment of a Gross Settlement Amount of \$4,000,000 ("Gross Settlement Amount") to resolve the claims against Defendants. Class Members are eligible to receive a *pro rata* share of the Net Settlement Amount remaining after payment of any Attorneys' Fees and Costs, Administrative Expenses, and Class Representatives' Compensation to the Named Plaintiffs. The Net Settlement Amount will be allocated to Settlement Class Members according to a Plan of Allocation to be approved by the Court and further described below.
- Settlement Class Members with a positive balance in their Plan account as of July 30, 2021 (referred to herein as "Current Participants") will automatically receive allocations directly to their Plan accounts so long as they maintain a positive balance through the time Settlement monies are distributed. Settlement Class Members who participated in the Plans during the Class Period but who do not have an Active Account as of July 30, 2021 (referred to herein as "Former Participants") will receive their settlement payment in the form of a check, or in the form of a rollover to an individual retirement account or other tax-qualified employer benefit plan if they elect a rollover.
- The terms and conditions of the Settlement are set forth in the Settlement Agreement dated July 12, 2021. Capitalized terms used in this Notice but not defined in this Notice have the meanings assigned to them in the Settlement Agreement.

The Settlement Agreement is available at [www.KochERISASettlement.com](http://www.KochERISASettlement.com). Certain other documents also will be posted on that website. You should visit that website if you would like more information about the Settlement or the lawsuit. All papers filed in this lawsuit are also available for review via the Public Access to Court Electronic Records System (PACER), at <http://www.pacer.gov>, or by appearing in person during regular business hours at the Office of the Clerk of the United States District Court for the Northern District of Georgia, Richard B. Russell Federal Building, 2211 United States Courthouse, 75 Ted Turner Drive, SW, Atlanta, GA 30303.

- Your rights and the choices available to you—and the applicable deadlines to act—are explained in this Notice. Please note that neither the Defendants nor any employees, attorneys, or representatives of the Defendants may advise you as to what the best choice is for you or how you should proceed.
- The Court still has to decide whether to give its final approval to the Settlement. Payments under the Settlement will be made only if the Court finally approves the Settlement, and that final approval is upheld in the event of any appeal.
- A Fairness Hearing will take place on December 9, 2021, at 9:30 a.m., before the Honorable Mark H. Cohen, United States District Court for the Northern District of Georgia, 1921 Richard B. Russell Federal Building and United States Courthouse, 75 Ted Turner Drive, SW, Atlanta, GA 30303, in Courtroom 1905, to determine whether to grant final approval of the Settlement and approve the requested Attorneys’ Fees and Costs, Administrative Expenses, and Class Representatives’ Compensation. If the Fairness Hearing is rescheduled, or if it is held by video conference or telephone, a notice will be posted on the Settlement Website at [www.KochERISASettlement.com](http://www.KochERISASettlement.com).
- Any objections to the Settlement, or to the requested Attorneys’ Fees and Costs, Administrative Expenses, or Class Representatives’ Compensation, must be served in writing on Class Counsel and the Defendants’ counsel, as identified on page 6 of this Settlement Notice, at least 21 calendar days before the Fairness Hearing.

<b>YOUR LEGAL RIGHTS AND OPTIONS UNDER THE SETTLEMENT:</b>	
<b>OUR RECORDS INDICATE YOU ARE A <u>CURRENT PARTICIPANT</u>. IF SO, YOU DO NOT NEED TO DO ANYTHING TO RECEIVE YOUR SHARE OF THE SETTLEMENT.</b>	Our records indicate that you are a <u>Current Participant</u> . You do not need to do anything to receive your share of the Net Settlement Amount. If, however, you are a Former Participant who no longer has a Plan account with a positive balance, or are the beneficiary or alternate payee of a Former Participant, then you may submit a Former Participant Rollover Form postmarked on or before December 27, 2021 to receive a share of the Net Settlement Amount via rollover. If you are a Former Participant and you do not mail the Former Participant Rollover Form by the above deadline, you will receive your share of the Net Settlement Amount via check. If you believe you are a Former Participant, a rollover form may be obtained by calling the Settlement Administrator at 1-855-918-5985 or by accessing <a href="http://www.KochERISASettlement.com">www.KochERISASettlement.com</a> .
<b>YOU CAN OBJECT (NO LATER THAN NOVEMBER 18, 2021)</b>	You cannot opt out of this Settlement. But, if you wish to object to any part of the Settlement, or to the requested Attorneys’ Fees and Costs, Administrative Expenses, or Class Representatives’ Compensation, you may do so. You must submit your objection and any supporting documents to Class Counsel and the Defendants’ counsel (as identified on page 6 below) at least 21 calendar days before the Fairness Hearing.
<b>YOU CAN ATTEND A HEARING ON DECEMBER 9, 2021</b>	You may also attend the Fairness Hearing and speak at the Fairness Hearing on December 9, 2021. Please note that you will not be permitted to make an objection to the Settlement at the hearing if you do not comply with the requirements for making objections.

## **The Class Action**

The above-referenced lawsuit, *David Kinder, et al. v. Koch Industries, Inc., et al.*, No. 1:20 cv 02973 MHC (N.D. Ga.) (the “Action” or “lawsuit”), has been pending since July 16, 2020. The Court supervising the case is the United States District Court for the Northern District of Georgia. The individuals who brought this lawsuit are called the Class Representatives, and the persons that were sued are called the Defendants. The Class Representatives, David Kinder, Tracy Scott, Elbert Peay, and Cherry Crawford, are current and former participants in the Plans. The Defendants are Koch Industries, Inc., Koch Business Solutions, LP, and the Koch Benefits Administrative Committee (now known as the Koch Industries, Inc. and Affiliated Companies Administrative Committee). The claims in the lawsuit are described below and on page 4, and additional information about them, including a copy of the operative Third Amended Complaint, is available at [www.KochERISASettlement.com](http://www.KochERISASettlement.com).

## **The Settlement**

Following mediation before an experienced, neutral mediator, and negotiations between Class Counsel and Defendants’ counsel, the parties to this lawsuit reached a Settlement. The Settlement will provide, among other things, for a combined Gross Settlement Amount of \$4,000,000 to be paid to resolve the claims against Defendants. Class Members are eligible to receive a *pro rata* share of the Net Settlement Amount remaining after payment of any Administrative Expenses, any Attorneys’ Fees and Costs that the Court awards to Class Counsel, and any compensation that the Court awards to the Class Representatives. The Net Settlement Amount will be allocated to Settlement Class Members according to a Plan of Allocation to be approved by the Court and further described below.

In addition, the Settlement provides that Defendants shall issue a new request for proposals for recordkeeping services for the Plans within one hundred eighty (180) days of the Settlement Effective Date.

## **Statement of Attorneys’ Fees and Costs, Administrative Expenses, and Class Representatives’ Compensation Sought in the Class Action**

Class Counsel has devoted substantial time and effort to investigating the facts, prosecuting the lawsuit, reviewing documents obtained from Defendants, and negotiating the Settlement. During that time, they also have advanced costs necessary to pursue the case. Class Counsel took the risk of litigation and have not been paid for any of their time or for any of these costs throughout the time this case has been pending.

Class Counsel will apply to the Court for payment of Attorneys’ Fees for their work in the case. The amount of fees that Class Counsel will request will not exceed one-fourth of the Gross Settlement Amount (\$1,000,000.00). In addition, Class Counsel also will seek to recover their litigation costs and recoverable administrative expenses associated with the Settlement. Any Attorneys’ Fees and Costs and Administrative Expenses awarded by the Court will be paid from the Gross Settlement Amount. Class Counsel also will ask the Court to approve a payment, not to exceed \$5,000, for each of the Class Representatives who took on the risk of litigation and committed to spend the time necessary to bring the case against the Defendants to a conclusion. Any Class Representatives’ Compensation approved by the Court will also be paid from the Gross Settlement Amount.

A full and formal application for Attorneys’ Fees and Costs, Administrative Expenses, and Class Representatives’ Compensation will be filed with the Court on or before October 19, 2021. This application will be made available at [www.KochERISASettlement.com](http://www.KochERISASettlement.com). You may also obtain a copy of this application through the Public Access to Court Electronic Records System (PACER) at <http://www.pacer.gov>, or by appearing in person during regular business hours at the Office of the Clerk of the United States District Court for the Northern District of Georgia, Richard B. Russell Federal Building, 2211 United States Courthouse, 75 Ted Turner Drive, SW, Atlanta, GA 30303.

### **1. Why Did I Receive This Settlement Notice?**

The Settlement Administrator has caused this Notice to be sent to you because its records indicate that you may be a Current Participant Class Member. If you fall within the definition of the Settlement Class, you have a right to know about the Settlement and about all of the options available to you before the Court decides whether to give its final approval to the Settlement.

### **2. What Is the Class Action About?**

In the Class Action, the Class Representatives claim that the Defendants failed to prudently monitor and control the Plans’

recordkeeping expenses and allowed class members to be charged amounts in excess of what similarly sized plans would have paid for such services. Specifically, the Class Representatives claim that the recordkeeping expenses charged to the Plans were unreasonable and that Defendants deducted excess fees from Class Members' accounts for recordkeeping costs. The Defendants have denied and continue to deny liability as to all claims and assert that they have always acted prudently and in keeping with their fiduciary duties under ERISA by monitoring, reviewing, and evaluating the recordkeeping expenses paid by the Plans and by ensuring the Plans and Plan participants paid reasonable fees for all recordkeeping services provided to the Plans.

### **3. Why Is There A Settlement?**

The Court has not reached a final decision as to the Class Representatives' claims. Instead, the Class Representatives and the Defendants have agreed to the Settlement. The Settlement is the product of arm's length negotiations between the Class Representatives, the Defendants, and their counsel, who were assisted in their negotiations by a neutral, experienced mediator. The parties to the Settlement have taken into account the uncertainty, risks, and costs of litigation and have concluded that it is desirable to settle on the terms and conditions set forth in the Settlement Agreement. The Class Representatives and Class Counsel believe that the Settlement is best for the Settlement Class. Nothing in the Settlement Agreement is an admission or concession on the Defendants' part of any fault or liability whatsoever. They have entered into the Settlement Agreement to avoid the uncertainty, expense, and burden of additional litigation.

### **4. What Does the Settlement Provide?**

As part of the Settlement, a Gross Settlement Amount of \$4,000,000 is being paid to resolve the claims in the Action. Class Members are eligible to receive a *pro rata* share of the Net Settlement Amount remaining after payment of Administrative Expenses, any Attorneys' Fees and Costs that the Court awards to Class Counsel, and any compensation that the Court awards to the Named Plaintiffs. Allocations to Current Participants who are entitled to a distribution under the Plan of Allocation will be made into their existing accounts in the Plan. Former Participants who are entitled to a distribution may receive their distribution as a check or, if they choose, as a rollover to a qualified retirement account.

In addition, the Settlement provides that Defendants shall issue a new request for proposals for recordkeeping services for the Plans within one hundred eighty (180) days of the Settlement Effective Date.

In exchange for the foregoing monetary and prospective relief, all Settlement Class Members and anyone claiming through them will fully release the Defendants and other Released Parties from the Released Claims, as defined in the Settlement Agreement. The Released Parties include the Plans, each Defendant, each individual Administrative Committee member, and certain related parties as outlined in the Settlement Agreement. The Released Claims include any claims against any of the Released Parties with respect to any of the Plans arising on or before December 31, 2020 that were asserted in the Action or could have been asserted in the Action, or that are based on the same factual predicate, including those that arise out of, relate to, are based on, or have any connection with (i) the selection, oversight, retention or performance of the Plans' recordkeeper, Alight Solutions, LLC, or (ii) the amounts paid to, received by, charged by, or deducted for recordkeeping, administrative or other services provided by the Plans' recordkeeper or its affiliates that are related to the Plans. In addition, the Released Claims also include certain other claims as set forth in the Settlement Agreement.

This is *only* a summary of the Released Parties and Released Claims, and is not a binding description of either. The governing releases are found within the Settlement Agreement, which is available at [www.KochERISASettlement.com](http://www.KochERISASettlement.com).

### **5. How Much Will My Distribution Be?**

The amount, if any, that will be allocated to you will be based upon records maintained by the Plans' recordkeeper. Calculations regarding individual distributions will be performed by the Settlement Administrator, whose determinations will be final and binding, pursuant to the Court-approved Plan of Allocation.

To receive a distribution from the Net Settlement Amount, you must either be a (1) "Current Participant" as described on page 1; or (2) a "Former Participant" as described on page 1; or (3) a Beneficiary or Alternate Payee of a person identified in (1) or (2).

There are approximately 101,047 Settlement Class Members. The Net Settlement Amount will be divided *pro rata* among Settlement Class Members (and eligible Beneficiaries and Alternate Payees) based on their Settlement Allocation Score in relation to other Class Members. The Settlement Allocation Score takes into account: (1) the amount of fees deducted from Class Members in excess of the Disbursement Amount paid by the Plans for recordkeeping services; and the (2) the base amount, if any, that the Plans paid for recordkeeping services in excess of the current Base Recordkeeping Rate of \$35.00 in a given year. A more complete description regarding the details of the Plan of Allocation can be found in Article 6 of the Settlement Agreement, which is available at [www.KochERISASettlement.com](http://www.KochERISASettlement.com).

## 6. How Can I Receive My Distribution?

**According to our records, you are a Current Participant. Therefore, you do not need to do anything to receive your share of the Net Settlement.** If this is not correct, you should contact the Settlement Administrator to obtain a Former Participant Rollover Form, if you wish to elect a rollover to an individual retirement account or other tax-qualified retirement account. The Former Participant Rollover Form will explain the steps necessary to receive your distribution via rollover. You may also obtain the Former Participant Rollover Form on the Settlement Website at [www.KochERISASettlement.com](http://www.KochERISASettlement.com) or by calling the Settlement Administrator at 1-855-918-5985. If you are a Former Participant but do not submit a timely, valid Former Participant Rollover Form, you will receive your distribution via check.

If you are considered a Current Participant because you had a Plan account with a balance greater than \$0.00 as of the date of the Court's Preliminary Approval Order, but it is determined that you no longer have a Plan account balance greater than \$0.00 when the Settlement proceeds are distributed to Settlement Class Members, the Settlement Administrator will mail you a check for your share of the Net Settlement Amount to your last known address. You may contact the Settlement Administrator to confirm or update your mailing address. The Settlement Administrator may be contacted by phone at 1-855-918-5985 or by mail at Koch ERISA Settlement, P.O. Box 2007, Chanhassen, MN 55317-2007.

## 7. When Will I Receive My Distribution?

The timing of the distribution of the Net Settlement Amount is conditioned on several matters, including the Court's final approval of the Settlement and any approval becoming final and no longer subject to any appeals in any court. An appeal of the final approval order may take several years. If the Settlement is approved by the Court and there are no appeals, the Settlement distribution likely will occur within approximately six months of the Court's Final Approval Order, unless there are unforeseen circumstances. There will be no payments under the Settlement if the Settlement Agreement is terminated.

## 8. Can I Get Out of The Settlement?

No. The Settlement Class has been certified for settlement purposes under Federal Rule of Civil Procedure 23(b)(1). Therefore, as a Settlement Class Member, you are bound by the Settlement (if it receives final Court approval) and any judgments or orders that are entered in the Action. If you wish to object to any part of the Settlement, you may write to Class Counsel and the Defendants' counsel about why you object to the Settlement, as discussed below.

## 9. Who Represents the Settlement Class?

For purposes of the Settlement, the Court has appointed Nichols Kaster, PLLP, Austin & Sparks, P.C., and the Sanford Law Firm as Class Counsel in the Class Action. If you want to be represented by your own lawyer, you may hire one at your own expense.

In addition, the Court appointed the named Plaintiffs, David Kinder, Tracy Scott, Elbert Peay, and Cherry Crawford, to serve as the Class Representatives. They are also Settlement Class Members.

## 10. How Will the Lawyers Be Paid?

Class Counsel will file a motion for an award of Attorneys' Fees and Costs, Administrative Expenses, and Class Representatives' Compensation at least 30 days prior to the objection deadline. This motion will be considered at the Fairness Hearing. Class Counsel will limit their application for Attorneys' Fees to not more than one-fourth of the Gross Settlement Amount.

Class Counsel also will seek to recover all actual and anticipated litigation costs and recoverable administrative expenses associated with the Settlement. In addition, Class Counsel will seek compensation for the Class Representatives of no more than \$5,000 each. The Court will determine the amount of fees, costs, administrative expenses, and Class Representatives' Compensation that will be awarded, if any. Class Counsel's motion for Attorneys' Fees and Costs, Administrative Expenses, and Class Representatives' Compensation, will be posted on the Settlement Website at [www.KochERISASettlement.com](http://www.KochERISASettlement.com), will also be available for review via the Public Access to Court Electronic Records System (PACER), at <http://www.pacer.gov>, and can be obtained in person during regular business hours at the Office of the Clerk of the United States District Court for the Northern District of Georgia, Richard B. Russell Federal Building, 2211 United States Courthouse, 75 Ted Turner Drive, SW, Atlanta, GA 30303.

## 11. How Do I Tell the Court If I Don't Like the Settlement?

If you are a Settlement Class Member, you can object to the Settlement by mailing a written objection to Class Counsel and to the Defendants' counsel (as identified below) that explains why you object.

Your written objection must: (1) clearly identify the case name and number: *David Kinder, et al. v. Koch Industries, Inc., et al.*, No. 1:20 cv 02973 MHC (N.D. Ga.); (2) include your full name, current address, and telephone number; (3) describe the basis for your objection; and (4) include your signature.

Your written objection and supporting documents must be personally delivered, or sent by U.S. mail or courier, to Class Counsel and the Defendants' counsel as set forth below **no later than November 18, 2021** to be considered. Class Counsel and the Defendants will have an opportunity to respond to your objection.

CLASS COUNSEL	DEFENDANTS' COUNSEL
Kai Richter Paul Lukas NICHOLS KASTER, PLLP 4700 IDS Center 80 S 8th Street Minneapolis, MN 55402	Evan Miller Miguel F. Eaton JONES DAY 51 Louisiana Ave, N.W. Washington, D.C. 20001

## 12. When and Where Will the Court Decide Whether to Approve the Settlement?

The Court will hold a Fairness Hearing at 9:30 a.m. on December 9, 2021, at United States District Court for the Northern District of Georgia, 1921 Richard B. Russell Federal Building and United States Courthouse, 75 Ted Turner Drive, SW, Atlanta, GA 30303, in Courtroom 1905. At the Fairness Hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The Court also will consider the motion for Attorneys' Fees and Costs, Administrative Expenses, and Class Representatives' Compensation. If there are objections, the Court will consider them then. Please note that if the Fairness Hearing is rescheduled, or if it is held by video conference or telephone, a notice will be posted on the Settlement Website at [www.KochERISASettlement.com](http://www.KochERISASettlement.com).

## 13. Do I Have to Attend the Fairness Hearing?

No, but you are welcome to come at your own expense. You may also make an appearance through an attorney. If you send an objection, you do not have to come to the Court to talk about it. As long as you mailed your written objection on time, the Court will consider it.

## 14. May I Speak at The Fairness Hearing?

Yes, but you must comply with the requirements for making an objection (described above) if you wish to object to the Settlement. If you do not comply with the requirements for making an objection, you will not be permitted to object at the Fairness Hearing.

## 15. What Happens If I Do Nothing at All?

If you are a “Current Participant” as described on page 1, and you do nothing, you will receive your *pro rata* share of the Net Settlement Amount as a deposit to your Plan account if the Settlement is finally approved. If you are a “Former Participant” as described on page 1, and you do nothing, and the Settlement is finally approved, you will receive your *pro rata* share of the Net Settlement Amount via check if you do not timely submit a rollover form.

## 16. How Do I Get More Information?

If you have questions regarding the Settlement, you can visit [www.KochERISASettlement.com](http://www.KochERISASettlement.com), call 1-855-918-5985, or write to the Settlement Administrator at Koch ERISA Settlement, P.O. Box 2007, Chanhassen, MN 55317-2007. All papers filed in this lawsuit are also available for review via the Public Access to Court Electronic Records System (PACER), at <http://www.pacer.gov>, or by appearing in person during regular business hours at the Office of the Clerk of the United States District Court for the Northern District of Georgia, Richard B. Russell Federal Building, 2211 United States Courthouse, 75 Ted Turner Drive, SW, Atlanta, GA 30303. Please note that neither Koch nor any employees, attorneys, or representatives of Koch may advise you regarding the Settlement or how you should proceed.