

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION**

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<p>Mark Drust individually and as a representative of a class of similarly situated persons, and on behalf of the Southwest Research Institute Retirement Plan</p> <p style="text-align:center">Plaintiff,</p> <p style="text-align:center">v.</p> <p>Southwest Research Institute, and John Does 1-20,</p> <p style="text-align:center">Defendant.</p>	<p style="text-align:center">Civil Case No. 5:23-cv-767-XR</p>
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**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 Southwest Research Institute Retirement Plan at any time on or after June 16, 2017, excluding the members of the Southwest Research Institute Retirement Plan Committee.

- The Court has given its preliminary approval to a proposed class action settlement (“Settlement”), in a lawsuit brought by a participant in the Southwest Research Institute Retirement Plan (“Plan”) against Southwest Research Institute (“Defendant”), alleging violations of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”) in relation to the management of the Plan. Defendant denies all claims, and nothing in the Settlement is an admission or concession on Defendant’s part of any fault or liability whatsoever. Defendant further maintains that it acted prudently and loyally at all times when acting in any fiduciary capacity with respect to the Plan.
- The Settlement will provide, among other things, for payment of a Gross Settlement Amount of \$500,000 (“Gross Settlement Amount”) to resolve the claims against Defendant. 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 Representative Compensation to the Class Representative. 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.

- Class Members with a positive balance in the Plan as of March 11, 2024 (“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. Class Members who participated in the Plan during the Class Period but who do not have an Active Account in the Plan as of March 11, 2024 (“Former Participants”) will receive their settlement payment via check.
- The terms and conditions of the Settlement are set forth in the Settlement Agreement dated March 11, 2024. 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 [www.SouthwestResearchERISASettlement.com](http://www.SouthwestResearchERISASettlement.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 [www.pacer.gov](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 Western District of Texas, United States Courthouse, located at 262 West Nueva Street, San Antonio, Texas 78207.
- Your rights and the choices available to you—and the applicable deadlines to act—are explained in this Notice. Please note that neither the Defendant nor any employees, attorneys, or representatives of the Defendant 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 August 9, 2024 at 11:00 a.m. before the Honorable Xavier Rodriguez of the United States Courthouse located at 262 West Nueva Street, San Antonio, Texas 78207, to determine whether to grant final approval of the Settlement and approve the requested Attorneys’ Fees and Costs, Administrative Expenses, and Class Representative 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.SouthwestResearchERISASettlement.com](http://www.SouthwestResearchERISASettlement.com).
- Any objections to the Settlement, or to the requested Attorneys’ Fees and Costs, Administrative Expenses, or Class Representative Compensation, must be served in writing to Class Counsel and the Defendant’ Counsel, as identified on page 7 of this Settlement Notice, at least 28 calendar days before the Fairness Hearing.

<b>YOUR LEGAL RIGHTS AND OPTIONS UNDER THE SETTLEMENT:</b>	
<b>OUR RECORDS INDICATE YOU ARE A CURRENT PARTICIPANT. 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 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 1-888-900-8779 or by mail at Southwest Research Settlement c/o Atticus Administration, PO Box 64053, Saint Paul, MN 55164.
<b>YOU CAN OBJECT NO LATER THAN JULY 12, 2024</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 Representative Compensation, you may do so. You must submit your objection and any supporting documents to Class Counsel and the Defendant's Counsel (as identified on page 7 below) at least 28 calendar days before the Fairness Hearing.
<b>YOU CAN ATTEND A HEARING ON AUGUST 9, 2024</b>	You may also attend the Fairness Hearing and speak at the Fairness Hearing on August 9, 2024 at 11:00 a.m. 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, *Drust v. Southwest Research Institute, et al.*, No. 5:23-cv-767 (W.D. TX) (the "Action" or "lawsuit"), has been pending since June 16, 2023. The Court supervising the case is the United States District Court for the Western District of Texas. The individual who brought this lawsuit is called the Class Representative, and the person that was sued is called the Defendant. The Class Representative (Mark Drust) is a current participant in the Plan. The Defendant is Southwest Research Institute. The claims in the lawsuit are described below on page 4, and additional information about them, including a copy of the operative Complaint, is available at [www.SouthwestResearchERISASettlement.com](http://www.SouthwestResearchERISASettlement.com).

**The Settlement**

The Settlement will provide, among other things, for a combined Gross Settlement Amount of \$500,000 to be paid to resolve the claims against the Defendant. 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 no later than twelve months following the Settlement Effective Date, Defendant will engage and utilize the services of an independent consultant or

consultants to assist with the monitoring of the Plan's investments for a period of three years from the engagement.

**Statement of Attorneys' Fees and Costs, Administrative Expenses, and Class Representative 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 Defendant, 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-third of the Gross Settlement Amount (\$500,000). 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 \$2,500, for the Class Representative who took on the risk of litigation and committed to spend the time necessary to bring the case against the Defendant to a conclusion. Any Class Representative 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 Representative Compensation will be filed with the Court on or before June 12, 2024. This application will be made available at [www.SouthwestResearchERISASettlement.com](http://www.SouthwestResearchERISASettlement.com). You may also obtain a copy of this application through the Public Access to Court Electronic Records System (PACER) at [www.pacer.gov](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 Western District of Texas, United States Courthouse, located at 262 West Nueva Street, San Antonio, Texas 78207.

**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 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 Representative claims that the Defendant breached the duty of prudence by failing to prudently select and monitor the Plan's investments and remove imprudent investments. A more complete description of Plaintiff's allegations is in the Complaint, which is available on the Settlement Website at [www.SouthwestResearchERISASettlement.com](http://www.SouthwestResearchERISASettlement.com).

Defendant has denied and continues to deny liability as to all claims and asserts that it has always acted prudently and in keeping with its fiduciary duties under ERISA.

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

The Court has not reached a final decision as to the claims. Instead, the Class Representative and the Defendant have agreed to the Settlement. The Settlement is the product of arm's-length negotiations between the Class Representative, the Defendant, and their counsel. 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 Representative 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 Defendant's 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 \$500,000 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 Class Representative. 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 will receive their distribution as a check sent to their last known address.

In addition, the Settlement provides that no later than twelve months following the Settlement Effective Date, Defendant will engage and utilize the services of an independent consultant or consultants to assist with the monitoring of the Plan's investments for a period of three years from the engagement.

In exchange for the foregoing monetary and prospective relief, all Settlement Class Members and anyone claiming through them will fully release the Defendant and other Released Parties from the Released Claims, as defined in the Settlement Agreement, which is available at [www.SouthwestResearchERISASettlement.com](http://www.SouthwestResearchERISASettlement.com). Generally, the release means that Class Members will not have the right to sue the Plan, Defendant, or related parties for conduct during the Class Period arising out of or related to the allegations in the Action.

#### **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 Plan's 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 2; or (2) a "Former Participant" as described on page 2; or (3) a Beneficiary or Alternate Payee of a person identified in (1) or (2).

There are approximately 7,840 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 Average Account Balance during the Class Period in relation to other Class Members. To calculate the Average Account Balance, the Settlement Administrator will review Class Members' account balances in the Plan for each quarter during the Class Period. A Class Member's Average Account Balance shall be the average of the quarterly scores during the Class Period, weighted to account for partial quarters.

A more complete description regarding the Plan of Allocation can be found in Article 6 of the Settlement Agreement, available at [www.SouthwestResearchERISASettlement.com](http://www.SouthwestResearchERISASettlement.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 Amount.** You will automatically receive your distribution directly to your Plan account so long as you maintain a positive balance through the time Settlement monies are distributed.

If you are considered a Current Participant because you had a Plan account with a balance greater than \$0.00 as of March 11, 2024, 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 1-888-900-8779 or by mail at Southwest Research Settlement c/o Atticus Administration, PO Box 64053, Saint Paul, MN 55164.

#### **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 Defendant's 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 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 Mark Drust (the named Plaintiff) to serve as the Class Representative. He is also a Class Member.

#### **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 Representative 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-third 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 Representative of no more than \$2,500. The Court will determine the amount of Attorneys' Fees and Costs, Administrative Expenses, and Class Representative Compensation that will be awarded, if any. Class Counsel's motion for Attorneys' Fees and Costs, Administrative Expenses, and Class Representative Compensation, will be posted on the Settlement Website at [www.SouthwestResearchERISASettlement.com](http://www.SouthwestResearchERISASettlement.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 Western District of Texas, United States Courthouse, located at 262 West Nueva Street, San Antonio, Texas 78207.

**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 Defendant's Counsel (as identified below) that explains why you object.

Your written objection must: (1) clearly identify the case name and number: *Drust v. Southwest Research Institute, et al.*, No. 5:23-cv-767 (W.D. TX); (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 Defendant's Counsel as set forth below **no later than July 12, 2024** to be considered. Class Counsel and the Defendant will have an opportunity to respond to your objection.

CLASS COUNSEL	DEFENDANT'S COUNSEL
Brock Specht Paul Lukas Ben Bauer NICHOLS KASTER, PLLP 4700 IDS Center 80 South 8th Street Minneapolis, MN 55402	Jeremy Blumenfeld MORGAN, LEWIS & BOCKIUS LLP 1701 Market Street Philadelphia, PA 19103

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

The Court will hold a Fairness Hearing at **11:00 a.m. on August 9, 2024**, at the United States District Court for the Western District of Texas, United States Courthouse, located at 262 West Nueva Street, San Antonio, Texas 78207. 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 Representative 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.SouthwestResearchERISASettlement.com](http://www.SouthwestResearchERISASettlement.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 2, 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 2, and you do nothing, and the Settlement is finally approved, you will receive your *pro rata* share of the Net Settlement Amount via check.

#### **16. How Do I Get More Information?**

If you have questions regarding the Settlement, you can visit [www.SouthwestResearchERISASettlement.com](http://www.SouthwestResearchERISASettlement.com), call 1-888-900-8779 or write to the Settlement Administrator at Southwest Research Settlement c/o Atticus Administration, PO Box 64053, Saint Paul, MN 55164. All papers filed in this lawsuit are also available for review via the Public Access to Court Electronic Records System (PACER), at [www.pacer.gov](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 Western District of Texas, United States Courthouse, located at 262 West Nueva Street, San Antonio, Texas 78207. Please note that neither the Defendant nor any employees, attorneys, or representatives of the Defendant may advise you regarding the Settlement or how you should proceed.