

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

MOORE, et al.,

Plaintiffs,

v.

GMAC MORTGAGE, et al.,

Defendants.

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Civ. No. 07-4296

ORDER

Lead Class Counsel have petitioned for an award of attorneys’ fees, reimbursement of litigation costs, and case contribution awards for Named Plaintiffs. (Doc No. 291.) In a separate Order of this date, I have granted Plaintiffs’ Motion to approve Settlement and to certify the Class for settlement purposes. Because I find the requested attorneys’ fees, costs, and case contribution awards to be appropriate, fair, and reasonable, I will grant Plaintiffs’ unopposed request.

Class Counsel have requested \$1,875,000.00 in attorneys’ fees and reimbursement of \$454,097.14 in litigation costs, for a total award of \$2,329,097.14. In addition, each Named Plaintiff requests a case contribution award of \$5,000.00. These monies are to be paid from the Settlement Fund and in accordance with the terms of the Settlement Agreement.

Attorneys’ Fees

“[A] thorough judicial review of fee applications is required in all class action settlements.” In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig., 55 F.3d 768, 819 (3d Cir. 1995). This is especially true where, as here, the Parties negotiate class relief and attorneys’ fees simultaneously, creating a potential conflict of interest. In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions, 148 F.3d 283, 333 (3d Cir. 1998) (quoting

Weinberger v. Great N. Nekoosa Corp., 925 F.2d 518, 524 (1st Cir.1991)) (“When parties are negotiating settlements, the court must always be mindful of the danger that the lawyers might urge a class settlement at a low figure or on a less-than-optimal basis in exchange for red-carpet treatment for fees.”).

In evaluating a proposed award of attorneys’ fees, I must consider the following factors:

(1) the size of the fund created and the number of persons benefitted; (2) the presence or absence of substantial objections by members of the class to the settlement terms and/or fees requested by counsel; (3) the skill and efficiency of the attorneys involved; (4) the complexity and duration of the litigation; (5) the risk of nonpayment; (6) the amount of time devoted to the case by plaintiffs’ counsel; and (7) the awards in similar cases.

Gunter v. Ridgewood Energy Corp., 223 F.3d 190, 195 n.1 (3d Cir. 2000) (citing Prudential, 148 F.3d at 336-40). I must also consider

(8) the value of benefits attributable to the efforts of class counsel relative to the efforts of other groups, such as government agencies conducting investigations, (9) the percentage fee that would have been negotiated had the case been subject to a private contingent fee arrangement at the time counsel was retained, and (10) any innovative terms of settlement.

In re Diet Drugs Prod. Liab. Litig., 582 F.3d 524, 541 (3d Cir. 2009) (citing Prudential, 148 F.3d at 338-40).

Courts calculate fee awards either using the lodestar approach—multiplying hours worked on the case by a reasonable hourly billing rate—or by awarding a percentage of the total amount recovered in settlement. Diet Drugs, 582 F.3d at 540. In common fund cases, the Third Circuit favors the percentage-of-recovery method over the lodestar approach. Id.; see also G.M. Trucks, 55 F.3d at 821 (“Courts use the percentage of recovery method in common fund cases on the theory that the class would be unjustly enriched if it did not compensate the counsel responsible for generating the valuable fund bestowed on the class.”).

The Third Circuit approves the use of the lodestar method, however, as a “cross-check of the court’s primary fee calculation using the percentage-of-recovery methodology.” Prudential, 148 F.3d at 342. Because the lodestar calculation serves only as a verification of the primary calculation, it “need entail neither mathematical precision nor bean-counting.” In re Rite Aid Corp. Sec. Litig., 396 F.3d 294, 305-6 (3d Cir. 2005) (approving as “proper” an “abridged lodestar analysis” as cross-check for percentage-of-recovery calculation); see also O’Keefe v. Mercedes-Benz USA, LLC, 214 F.R.D. 266, 311 (E.D. Pa. 2003) (lodestar cross-check “only meant to be a cursory overview”). The lodestar cross-check is “suggested,” but not mandatory. In re Cendant Corp. PRIDES Litig., 243 F.3d 722, 735 (3d Cir. 2001). “The lodestar cross-check, while useful, should not displace a district court’s primary reliance on the percentage-of-recovery method.” In re AT&T Corp., 455 F.3d 160, 164 (3d Cir. 2006).

I find that the Gunter/Prudential factors weigh in favor of approving the Petition. In light of the risks and difficulties of continued litigation (as I have documented in today’s companion Order), the negotiated Settlement Fund of \$6,250,000 represents a substantial benefit to the 122,963 Class Members. There have been no objections to the proposed fee award. Class Counsel are experienced in both class action and RESPA litigation, as evidenced by the Declaration and Exhibits in support of the fee request. (Doc. No. 292.) Litigation in this matter has been protracted and complex, spanning more than seven years. Class Counsel’s contingent fee depended on Plaintiffs prevailing in this matter, which was by no means certain. Class Counsel have devoted 7,423 hours to litigating this case over the past seven years, participating in several mediation sessions, filing numerous briefs, and conducting discovery. The fees requested, which constitute 30% of the Settlement Fund, resemble awards in similar cases. See Order at 5-6, Liguori v. Wells Fargo & Co., No. 08-479 (E.D. Pa. Feb. 8, 2013) (approving 30%

fee award); Alexander v. Washington Mut., Inc., Civ. No. 07-4426, 2012 WL 6021103, at *3 (E.D. Pa. Dec. 4, 2012) (approving fee award of 30% and collecting cases approving same). Class Counsel investigated, litigated, and negotiated the Settlement without the aid of any other group, such as a government agency. In re Certaineed Fiber Cement Siding Litig., MDL 2270, 2014 WL 1096030, at *26 (E.D. Pa. Mar. 20, 2014). The requested fee award is also consistent with a privately negotiated fee award. See id. (fee arrangements in private contingent fee cases range from 30% to 40%). Finally, the Settlement provides for an innovative distribution system, which will proceed in three phases. Class Counsel urge that this system will increase efficiency and ensure that all Participating Class Members receive their portion of the recovery.

A lodestar cross-check also supports the reasonableness of this fee award. The lodestar equals “the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate.” Hensley v. Eckerhart, 461 U.S. 424, 433 (1983). Class Counsel have calculated a lodestar of \$3,458,963.10, resulting in a multiplier of .54. (Doc. No. 291 at 32-33.) The number of hours billed (7,423) is conservative: Class Counsel has not billed for work done on behalf of the Class on a matter in the Northern District of California (which was voluntarily dismissed and refiled in this Court), and will not bill for the future work in implementing the Settlement. (Id. at 25 n.16, 34.)

“The value of an attorney’s time generally is reflected in his normal billing rate.” Lindy Bros. Builders, Inc. of Phila. v. Am. Radiator & Standard Sanitary Corp., 487 F.2d 161, 167 (3d Cir. 1973). Because a “reasonable hourly rate” reflects an attorney’s experience and expertise, the rates for individual attorneys vary. See O’Keefe, 214 F.R.D. at 310 (applying blended hourly rates in lodestar calculation). The hourly rates used in the lodestar calculation reasonably range from \$325 per hour for an associate to \$860 per hour for an experienced bankruptcy partner.

(Doc. No. 292, Exs. 11-16.) The .54 multiplier is well within the range of multipliers approved as reasonable in this Circuit. See, e.g., In re Cendant Corp., 243 F.3d at 742 (3d Cir. 2001) (suggesting a lodestar multiplier of 3 “is the appropriate ceiling for a fee award”).

Expenses

Class Counsel are also entitled to recover for litigation expenses. Alexander, 2012 WL 6021103, at *5 (quoting In re Cendant Corp. Derivative Action Litig., 232 F. Supp. 2d 327, 343 (D.N.J. 2002)) (“[C]ounsel in common fund cases is entitled to reimbursement of expenses that were adequately documented and reasonably and appropriately incurred in the prosecution of the case.”). Class Counsel have properly documented these costs and no objections have been filed. (Doc. No. 292, Exs. 12-16.)

Case Contribution Awards

Named Plaintiffs Moore, Holden, and McMillon assisted Class Counsel by responding to document requests and consulting with Counsel about developments in the case. Additionally, the \$5,000 request is consistent with case contribution awards in similar cases. Order at 6, Liguori, No. 08-479 (\$7,500 award in RESPA case); Order Awarding Attorneys’ Fees, Litigation Costs, and Case Contribution Awards at 2, Alston v. Countrywide Fin. Corp., No. 07-3508 (E.D. Pa. July 29, 2011) (\$7,500 award in RESPA case); Briggs v. Hartford Fin. Servs. Grp., Inc., No. 07-5190, 2009 WL 2370061, at *10 (E.D. Pa. July 31, 2009) (unopposed \$10,000 award in an insurance class action was “a modest sum relative to the \$2.35 million overall settlement fund”).

AND NOW, this 18th day of September, 2014, on consideration of Plaintiffs’ Unopposed Motion for an Award of Attorneys’ Fees, Litigation Costs and Case Contribution Awards for the

Named Plaintiffs (Doc. No. 291), and having found the Settlement of this matter to be fair, reasonable, and adequate, it is hereby **ORDERED** as follows:

1. This Court has jurisdiction over the subject matter of this application and all matters relating thereto, including all Class Members.

2. All of the capitalized terms used herein shall have the same meanings as set forth in the Settlement Agreement executed on December 10, 2013.

3. Plaintiffs' Counsel are awarded attorney fees in the amount of \$1,875,000.00 and reimbursement of litigation expenses in the sum of \$454,097.14, to be paid from the Settlement Fund. No other fees, costs or expenses may be awarded to Plaintiffs' Counsel in connection with the Settlement. The Attorneys' Fees and Expenses shall be paid to Plaintiffs' Counsel in accordance with the terms of the Agreement.

4. The Named Plaintiffs are hereby awarded \$5000.00 each as a Case Contribution Award, as defined in the Agreement, in recognition of their contributions to this Action.

AND IT IS SO ORDERED.

/s/ Paul S. Diamond

Paul S. Diamond, J.

September 18, 2014