IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

In re REGIONS MORGAN KEEGAN SECURITIES, DERIVATIVE and ERISA LITIGATION	)	
This document relates to:	)	No. 2:09-md-2009-SMH
In re Regions Morgan Keegan ERISA Litigation No. 2:08-cv-02192-SHM-dkv	)	

FINAL APPROVAL ORDER

Before the Court are the September 23, 2014 Motion for Final Approval of Class Action Settlement Agreement, Settlement Subclass Certification, and Approval of Plan of Allocation (the "Final Approval Motion"), brought by Named Plaintiffs Gary Shamblin, Terry Hamby, Nancy Jackson, Barbara Williams, Robert Harrison, Caesar L. Smith and James K. Smith, III, and the Representative Customer Plans, including court-appointed Trustee ad Litem of trust or custodial accounts for the Representative Customer Plans, C. Fred Daniels (who is included among the Named Plaintiffs only and solely in his capacity as the court-appointed Trustee ad Litem of trust or custodial accounts for each of the Representative Plans) (collectively the "Plaintiffs"); and the September 23, 2014 Motion for Award of Attorneys' Fees and Expenses and Named Plaintiff Case

Contribution Awards (the "Fee Motion"), brought by Keller Rohrback, LLP and Feinstein Doyle Payne & Kravec, LLC (collectively the "Class Counsels"). (Approval Motion, ECF No. 333; Fee Motion, ECF No. 334.)

For the following reasons, the Final Approval Motion and the Fee Motion are GRANTED.

I. Standard of Review

Class settlement approval is committed to the district court's discretion. Int'l Union, United Auto., Aerospace, & Agr. Implement Workers of Am. v. Gen. Motors Corp., 497 F.3d 615, 625 (6th Cir. 2007). To approve a class settlement, the district court must conclude that it is "fair, reasonable, and adequate." Id. at 631; Fed. R. Civ. P. 23(e)(1). A number of factors guide the inquiry: (1) the risk of fraud or collusion; (2) the complexity, expense and likely duration of the litigation; (3) the amount of discovery engaged in by the parties; (4) the likelihood of success on the merits; (5) the opinions of class counsel and class representatives; (6) the reaction of absent class members; and (7) the public interest. UAW v. Gen. Motors, 497 F.3d at 631. The court must also determine whether the settlement gives preferential treatment to the named plaintiffs. Vassalle v. Midland Funding LLC, 708 F.3d 747, 755 (6th Cir. 2013) (internal quotation marks and citation omitted).

The award of attorney's fees is within the Court's discretion. Bowling v. Pfizer, Inc., 102 F.3d 777, 779-80 (6th Cir. 1996). The court should determine the "appropriate method for calculating attorney's fees in light of the unique characteristics of class actions in general, and of the unique circumstances of the actual cases before [it]." Id. (internal citation omitted). In common fund cases, the award must be "reasonable under the circumstances." Moulton v. U.S. Steel Corp., 581 F.3d 344, 351-52 (6th Cir. 2009)

In exercising their discretion, district courts "[o]ften, but by no means invariably, . . . address [the "Ramey Factors"]: (1) the value of the benefit rendered to the plaintiff class; (2) the value of the services on an hourly basis; (3) whether the services were undertaken on a contingent fee basis; (4) society's stake in rewarding attorneys who produce such benefits in order to maintain an incentive to others; (5) the complexity of the litigation; and (6) the professional skill and standing of counsel involved on both sides." Id. (internal quotation marks and citations omitted.)

II. Analysis

A. Final Approval

1. The Risk of Fraud or Collusion

Courts presume the absence of fraud or collusion in class action settlements unless there is evidence to the contrary.

See, e.g., Leonhardt v. ArvinMeritor, Inc., 581 F.Supp.2d 818, 838 (E.D. Mich. 2008); In re Telectronics Pacing Sys., 137 F.Supp. 2d 985, 1016 (S.D. Ohio 2001).

The Court has no evidence of fraud or collusion. To the contrary, the record demonstrates that the Settlement developed from vigorous, arms-length negotiations. The parties executed the Settlement Agreement only after mediating before Judge Daniel Weinstein, a nationally recognized mediator and retired judge, and agreeing to the terms of his proposal. (Loeser ¶¶ 15-17, ECF No. 335.) Because the parties settled only after arms-length negotiations, this factor weighs in favor of approving the Settlement.

2. The Complexity, Expense, and Likely Duration of the Litigation

In evaluating a proposed class settlement, the Court must weigh the risks, expense and delay Plaintiffs would face if they continued to prosecute the litigation through trial and appeal. UAW v. Gen. Motors, 497 F.3d at 631; Thacker v. Chesapeake Appalachia, L.L.C., 695 F. Supp. 2d 521, 531 (E.D. Ky. 2010).

Several factors weigh in favor of approving the Settlement: the complexities of the evolving law governing ERISA, bank holding, and class action litigation; the multiple, large Subclasses; the likelihood of appeals; and the lengthy duration of this costly litigation, as evidenced by the extensive motion

practice engaged in and discovery conducted by the parties for the past six-and-a-half years. This factor weighs heavily in favor of approving the Settlement.

3. The Amount of Discovery Engaged in by the Parties

The parties have conducted extensive discovery. Plaintiffs have issued three sets of interrogatories and seven sets of requests for production. (Loeser ¶ 9.) They have subpoenaed documents from several third-parties. (Id. ¶ 9.) They have reviewed 786,500 documents, or 7,360,500 pages, received from Defendants and third-party sources. (Id. ¶ 10.) Plaintiffs have conducted multiple depositions. (Id. ¶ 11.) They have reviewed publicly-available Plan documents, documents provided by participants in the In-House Plans, and media reports and public filings about the Corporate Defendants' financial condition. (Id. ¶ 12.) Plaintiffs have reviewed documents from Defendants' files maintained for each of the more than 450 Customer Plans Accounts in the Customer Plan Settlement Subclass. (Id. ¶ 12) Plaintiffs have worked with consulting experts to assist in the investigation and analysis of the Regions Stock, Bond Fund and excessive fee claims at issue in the case. (Id. ¶ 13). Defendants have issued extensive interrogatories and requests for production to each of the Named Plaintiffs and each of the Representative Customer Plans. (Id. ¶ 14.)

The parties' thorough discovery enabled them to frankly evaluate the merits of and risks in their respective cases and to determine an appropriate settlement value. See, e.g., Thacker, 695 F.Supp. 2d at 532 (finding that the parties' extensive discovery enabled them to evaluate adequately their cases' merits and weighed toward approving the class settlement); In re Skechers Toning Shoe Prods. Liab. Litig., 2013 WL 2010702, *5-6 (W.D. Ky. May 13, 2013) (same); Bailey v. AK Steel Corp., 2008 WL 495539, *3 (S.D. Ohio Feb. 21, 2008) (same); Leonhardt, 581 F.Supp.2d at 837-38 (same).

This factor weighs in favor of approving the Settlement.

4. The Likelihood of Success on the Merits

"The most important of the factors to be considered in reviewing a settlement is the probability of success on the merits." Poplar Creek Dev. Co. v. Chesapeake Appalachia, L.L.C., 636 F.3d 235, 245 (6th Cir. 2011). "The likelihood of success, in turn, provides a gauge from which the benefits of the settlement must be measured." Id.

"Although this inquiry understandably does not require [the court] to decide the merits of the case or resolve unsettled legal questions, [the court] cannot judge the fairness of a proposed compromise without weighing the plaintiff's likelihood of success on the merits against the amount and form of the

relief offered in the settlement. UAW v. Gen. Motors, 497 F.3d at 631 (internal quotation marks and citation omitted).

"[The court's] task is not to decide whether one side is right or even whether one side has the better of these arguments." Id. at 632. "Otherwise, [the court] would be compelled to defeat the purpose of a settlement in order to approve a settlement." Id. "The question rather is whether the parties are using settlement to resolve a legitimate legal and factual disagreement." Id.

Weighing in favor of approving the Settlement is the high risk of continuing litigation. Absent settlement, Plaintiffs face significant risk in seeking certification of the four subclasses and addressing the substantive, contentious issues of timing, knowledge, damages, and the appropriateness of banking fees. Plaintiffs would face further uncertainty given the evolving case law in ERISA cases. See, e.g., Fifth Third Bankcorp v. Dudenhoeffer, 134 S.Ct. 2459 (2014).

Also weighing in favor of approval are the Settlement's amount and form. The Settlement provides monetary relief to all four Subclasses. The In-House Plans Regions Stock Subclass will receive 14.5 million dollars, which is 63.85% of the Subclass's likely recovery. (Approval Motion at 19-20.) The In-House Plans Excessive Fee Subclass will receive 2.4 million dollars,

which is 39.9% of discounted alleged damages.[1] (Id. at 20.) The In-House Plans Bond Fund Subclass will receive 3.4 million dollars, which is 18% of discounted alleged damages. (Id. at 20-21.) The Customer Plans Subclass will receive 2.4 million dollars, which is 17% of discounted alleged damages. (Id. at 21.)

For the past six-and-a-half years, the parties have litigated legitimate legal and factual disagreements. Given the high risk of continuing litigation, combined with the substantial monetary relief, this factor weighs heavily in favor of approving the Settlement.

5. The Opinions of Class Counsel and Class Representatives

In deciding whether a proposed settlement warrants approval, the informed and reasoned judgment of plaintiffs' counsel and their weighing of the relative risks and benefits of protracted litigation are entitled to great deference. See, e.g., Thacker, 695 F. Supp. 2d at 532-33; UAW v. Ford Motor Co., 2008 WL 4104329 at *26 (E.D. Mich. August 29, 2008) ("[t]he endorsement of the parties' counsel is entitled to significant weight, and supports the fairness of the class settlement."); Stewart v. Rubin, 948 F.Supp. 1077, 1087 (D.D.C.1996) (the trial court "should defer to the judgment of experienced counsel who have competently evaluated the strength of the proof").

[1] Plaintiffs' alleged damages are discounted by the amount of alleged alternative relief. (Approval Motion at 20-21.)

Class Counsel have been lead or co-lead class counsel in ERISA breach of fiduciary duty cases throughout the nation. (Loeser Decl. ¶ 41.) Keller Rohrback has served as lead or co-lead counsel in ERISA fiduciary breach class actions filed against American International Group, Fremont General Corp., Bear Stearns, Wachovia, Enron, WorldCom, Global Crossing, Merrill Lynch, Countrywide, IndyMac, and Washington Mutual. (Id. ¶ 41.) Keller Rohrback has achieved settlements for its ERISA clients in excess of $1 billion. (Id. ¶ 41.) Feinstein Doyle Payne & Kravec have also served as lead counsel in many ERISA fiduciary duty cases over the past fifteen years. (Id. ¶ 41.)

Class Counsel recommend approval of the Settlement. (Loeser Decl. ¶ 50.) Given their experience in other cases and their intimate knowledge of the legal and factual issues in this case, Class Counsel's recommendation is entitled to great deference. The Class Representatives have not objected to the Settlement Agreement or asked to withdraw from this litigation. Given Class Counsel's approval of the Settlement, and without evidence of Class Representative disapproval, this factor weighs in favor of approving the Settlement.

6. The Reaction of Absent Class Members

The absent Class members have received adequate notice and do not disapprove of the Settlement. By July 23, 2014, the

Garden City Group, Inc. ("GCG") had disseminated 49,962 Class Notices by first-class mail. (GCG Decl. ¶ 3, ECF No. 342.) GCG had also set up, and continues to maintain, a website and an automated toll-free number, through which Class Members can obtain Settlement information. (Id. ¶¶ 5-6.) By November 30, 2014, GCG had received a total of 837 calls and the website had received 1,375 visits. (Id. ¶¶ 5-6.) Notice is adequate, and has resulted in actual notice to most Class Members.

GCG has received two timely requests for exclusion. (Id. ¶ 7.) One request was withdrawn. (Id. ¶ 7.) The other was submitted by Sheet Metal Workers Local Union 441 Health & Pension Plans.

The Court has received only one timely written objection. On October 23, 2014, Lena Vernon mailed her objection to the Court. (Objection, ECF No. 339.) Ms. Vernon did not supply her proof of membership, a requirement to object pursuant to the Preliminary Approval Order. Her objection was not that the Settlement was an inadequate recovery for class members, but that "Regions and Regions Morgan Keegan let their employees choose their own investment options." (Objection.) No one appeared at the Fairness Hearing to object to the Settlement.

If only a small number of objections are received from a large class, that fact can be viewed as indicative of the adequacy of the settlement. See, e.g., In re Se. Milk Antitrust

Litig., 2013 WL 2155379, at *6 (E.D. Tenn. May 17, 2013); In re NASDAQ Market–Makers Antitrust Litig., 187 F.R.D. 465, 478 (S.D.N.Y. 1998); In re Cardizem CD Antitrust Litig., 218 F.R.D. 508, 527 (E.D. Mich. 2003). In response to the 49,962 Class Notices, one Class member opted out and no one objected to the amount of the Settlement. This factor weighs heavily toward approving the Settlement.

7. The Public Interest

The law favors the settlement of class action litigation. See UAW v. Gen. Motors, 497 F.3d at 632 (noting "the federal policy favoring settlement of class actions").

The resolution of this litigation will, among other things, (i) recover retirement funds, (ii) ensure certainty for all concerned without more delay, and (iii) obviate the need for years of litigation, all of which are consistent with the public interest. Accord Sheick v. Auto. Component Carrier LLC, 2010 WL 4136958, at *21 (E.D. Mich. Oct. 18, 2010). It simultaneously benefits the parties and serves the public interest by ensuring the availability of retirement funds and resolving this federal court dispute with the maximum possible expediency and efficiency. Id. at *21; In re Cardizem, 218 F.R.D. 508 at 520 ("There is a strong public interest in encouraging settlement of complex litigation and class action suits because they are

'notoriously difficult and unpredictable' and settlement conserves judicial resources").

Because Settlement provides recovery of retirement funds and certainty, this factor weighs in favor of approving the Settlement.

8. Named Plaintiffs' Relief Compared to Unnamed Class Members'

Because the Settlement provides the same relief for Subclass Members who are not named, this factor weighs in favor of approval of the Settlement.

For the foregoing reasons, the Settlement warrants final approval.

B. Fees

In the Sixth Circuit, a district court may base its fee award on a percentage of the common fund. Bowling, 102 F.3d at 779-80. District courts may cross-check that fee against the class counsel's Lodestar. Id. The Lodestar is the product of "the number of hours reasonably expended on the litigation [and] a reasonable hourly rate." Pennsylvania v. Delaware Valley Citizens' Council for Clean Air, 478 U.S. 546, 565 (1986).

Plaintiffs' Counsel seek $6,750,000, which is 30% of the Settlement amount. That fee is reasonable on its face. District courts in the Sixth Circuit often approve thirty

percent fees. Griffin v. Flagstar Bancorp, Inc., 2013 WL 6511860, at *8 (E.D. Mich. Dec. 12, 2013); Swigart v. Fifth Third Bank, 2014 WL 3447947, at *7 (S.D. Ohio July 11, 2014); In re Skelaxin, 2014 WL 2946459, at *1-3 (E.D. Tenn. June 30, 2014); Milk Antitrust, 2013 WL 2155387, at *3; Bowers v. Windstream Kentucky East, LLC, No. 09-440, 2013 WL 5934019, at *5 (W.D. Ky. Nov. 1, 2013); Thacker, 695 F. Supp. 2d at 528.

A thirty percent fee is reasonable given Plaintiffs' Counsel's Lodestar. Co-Lead Class Counsel and Plaintiffs' Personal Counsel have submitted timesheets demonstrating over 31,000 attorney and professional hours devoted to the prosecution of this case. (Loeser ¶¶ 31, 35-37). Both the hours spent and the hourly rates are reasonable given the nature and circumstances of this case. The resulting Lodestar is $10,846,493.89. (Id. ¶ 38.) The significantly higher Lodestar cross-check supports the reasonableness of a thirty percent fee.

The Ramey factors also support approval of the thirty percent fee. In their Fee Motion, Plaintiffs' Counsel address each of the Ramey six factors. (Fee Motion at 7-18.) They conclude correctly that all six factors weigh in favor of approving the fee. For the foregoing reasons, as well as for the reasons set forth in the Fee Motion, the $6,750,000 fee is reasonable.

Plaintiffs seek reimbursement of $508,201.51 for expenses. No one has objected to the amount of expenses. The Court has reviewed the expenses and they are reasonable.

C. Claims Incentive

The Sixth Circuit has recognized that there may be circumstances where incentive awards are appropriate. Vassalle, 708 F.3d at 756 (internal quotation marks and citation omitted). The Sixth Circuit has also provided that:

> The propriety of incentive payments is arguably at its height when the award represents a fraction of a class representative's likely damages; for in that case the class representative is left to recover the remainder of his damages by means of the same mechanisms that unnamed class members must recover theirs. The members' incentives are thus aligned. But we should be most dubious of incentive payments when they make the class representatives whole, or . . . even more than whole; for in that case the class representatives have no reason to care whether the mechanisms available to unnamed class members can provide adequate relief.

In re Dry Max Pampers Litig., 724 F.3d 713, 722 (6th Cir. 2013).

District courts in the Sixth Circuit have considered the following factors in determining whether to approve incentive awards for class representatives: (1) the action taken by the Class Representatives to protect the interests of Class Members and others and whether those actions resulted in a substantial benefit to Class Members; (2) whether the Class Representatives assumed substantial direct and indirect financial risk; and (3) the amount of time and effort the Class Representatives spent in

pursuing the litigation. Gascho v. Global Fitness Holdings, LLC, 2014 WL 3543819 (S.D. Ohio July 16, 2014).

In this case, the Named Plaintiffs and the Representative Customer Plans have spent more than six-and-a-half years meeting with counsel; locating, reviewing, and producing documents; and preparing for depositions. (Loeser ¶¶ 42-46.) Their substantial contribution produced an eight-figure monetary settlement for four subclasses. Given their efforts, the amount ultimately recovered, and the inherent risks of litigating their claims, a $10,000 contribution award to each of the Named Plaintiffs and to the Representative Customer Plans is appropriate.

III. Conclusion

For the foregoing reasons, the Final Approval Motion and the Fee Motion are GRANTED. The Court FINDS and ORDERS that[2]:

1. The Court has jurisdiction over the subject matter of this Action and over all Parties to the Action, including all members of the four Settlement Subclasses.

2. On July 23, 2014, 49,962 copies of the Class Notices were mailed via U.S. mail to the Settlement Subclass members.

[2] For purposes of this Order, the Court adopts all defined terms as set forth in the Class Action Settlement Agreement dated December 18, 2013, and the Exhibits thereto (collectively, the "Settlement Agreement"), and capitalized terms used in this Order have the same meaning as in the Settlement Agreement.

With respect to the Customer Plans Settlement Subclass, the Plan Administrators of the Customer Plans were directed to disseminate the Summary Notices to Participants, Beneficiaries, and Fiduciaries of the Customer Plans in accordance with the Settlement Agreement and the Preliminary Approval Order.

3. In accordance with the Court's Preliminary Approval Order, the Class Notices and Settlement Agreement were posted on the website identified in the Settlement Agreement, published in Investor's Business Daily, and transmitted over PRNewswire (collectively "Publication Notice").

4. The Class Notices, Summary Notices, and Publication Notice: (a) constituted the best practicable notice under the circumstances; (b) constituted notice that was reasonably calculated, under the circumstances, to apprise members of the Settlement Subclasses of the pendency of the Action, their right to object to the Settlement, the right of the Customer Plans to opt out of the Settlement, and the Settlement Subclass members' right to appear at the Fairness Hearing; (c) focused on the effective communication about the class action, were couched in plain and easily understood language, and were written and designed to the highest communication standards; (d) informed members of the

Settlement Subclasses of their rights with respect to Co-Lead Class Counsel's application for an award of attorney's fees and reimbursement of expenses, and for an award of Case Contribution Awards to Named Plaintiffs; (e) was reasonable and constituted due, adequate, and sufficient notice to all persons entitled to notice and who could be identified through reasonable effort; and (f) met all applicable requirements of the Federal Rules of Civil Procedure, due process and any other applicable law.

5. Defendants have complied fully with the notice provisions of the Class Action Fairness Act of 2005, 28 U.S.C. § 1715.

6. The following In-House Plan Subclasses (the "In-House Settlement Subclasses") are CERTIFIED for settlement purposes only under Fed. R. Civ. P. 23(b)(1)(A) and (B) and/or (b)(2):

(a) The In-House Plans Regions Stock Settlement Subclass:

all Persons, other than Defendants and Defendants' officers and directors subject to Section 16 of the Securities Exchange Act of 1934, who were Participants in or Beneficiaries of the In-House Plans at any time between January 1, 2007 and December 31, 2010 and whose Plan accounts were invested in Regions Stock at any time during this period.

(b) The In-House Plans Excessive Fee Settlement Subclass:

all Persons, other than Defendants and Defendants' officers and directors subject to Section 16 of the Securities Exchange Act of 1934, who were Participants in or Beneficiaries of the Legacy Plan and/or the Regions 401(k) Plan at any time between May 1, 2003 and May 15, 2009 and whose Plan accounts were invested in one or more of the RMK Select Funds at any time during this period.

(c) The In-House Plans Bond Fund Settlement Subclass:

all Persons, other than Defendants and Defendants' officers and directors subject to Section 16 of the Securities Exchange Act of 1934, who were Participants in or Beneficiaries of the Legacy Plan and/or the Regions 401(k) Plan at any time between November 9, 2006 and July 29, 2008 and whose Plan accounts were invested at any time during this period in one or more of the RMK Bond Funds.

7. The following Customer Plans Settlement Subclass is CERTIFIED for settlement purposes only under Fed. R. Civ. P. 23(b)(3) and, as to the Participants, Beneficiaries and Fiduciaries of those Customer Plans, under Rule 23(b)(1) of the Federal Rules of Civil Procedure:

all Customer Plans and all Persons, other than Defendants, who were Participants in, Beneficiaries of, or Fiduciaries of any Customer Plan that at any time between November 9, 2006 and July 29, 2008 had plan assets invested in one or more of the RMK Bond Funds. Excluded from the Customer Plans Settlement Subclass are the Customer Plans that either (a) previously signed agreements releasing one or more of the Defendants from claims encompassed by the Released Plaintiffs' Claims, or (b) validly and timely sought exclusion from the Customer Plans Settlement Subclass, and the Participants in, Beneficiaries of, or Fiduciaries of the Customer Plans described in Section 1.47.4 (a) or (b) of

the Settlement Agreement.

8. The Settlement is fair, reasonable, and adequate as to each member of the four Settlement Subclasses. The Settlement is supported by a determination by the Independent Fiduciary that the Settlement Agreement is authorized by, and is appropriate for, the In-House Plans. The Settlement complies with the terms of the Department of Labor's Class Exemption 2003-39, as amended, and is not a prohibited transaction under ERISA. The Settlement also complies with Internal Revenue Service Ruling 2020-45 and the Class Settlement Amount is a restorative payment.

9. The Plan of Allocation is approved as fair and reasonable. Co-Lead Class Counsel and the Claims Administrator are directed to allocate the Settlement Amount in accordance with the Settlement Agreement and the Plan of Allocation.

10. The Settlement and the Settlement Agreement are finally approved in all respects and the terms of the Settlement Agreement are incorporated into and made a part of this Order. The Parties are directed to implement the Settlement in accordance with the terms and conditions of the Settlement Agreement.

11. By operation of the ultimate Judgment in this case and

effective upon the entry of this Order: (a) each member of the Settlement Subclasses releases and forever discharges the Defendant Releasees from the Released Plaintiffs' Claims, as described in the Settlement Agreement; and (b) each Defendant releases and forever discharges the Plaintiff Releasees from the Released Defendants' Claims, as described in the Settlement Agreement. In connection with the dismissal of the Action, the Parties are to bear their own costs, except where otherwise provided in the Settlement Agreement.

12. Each member of the Settlement Subclasses is hereby forever barred and enjoined from commencing or prosecuting any action that purports to challenge the mechanics of the distribution of the Settlement Fund or Plan of Allocation (or amounts distributed thereunder), or that asserts any of the Released Plaintiffs' Claims against any of the Defendant Releasees, either directly, representatively, derivatively, or in any other capacity, whether by a complaint, counterclaim, or otherwise, in any local state or federal court, or in any agency or other authority or forum wherever located. Any person who knowingly violates this injunction shall be required to pay the costs and attorney's fees incurred by the Defendant Releasees as a

result of the violation.

13. Co-Lead Class Counsel are hereby awarded attorney's fees in the amount of $6,750,000, which the Court finds to be fair and reasonable, and $508,201.51 in reimbursement of Co-Lead Class Counsel's reasonable expenses incurred in prosecuting the Action. The attorney's fees and expenses so awarded shall be paid from the Qualified Settlement Fund pursuant to the terms of the Settlement Agreement. Co-Lead Class Counsel may, in their discretion, disburse funds from the award of attorney's fees and expenses to other Plaintiffs' counsel based on their contributions to the case.

14. Named Plaintiffs, with the exception of the Trustee ad Litem, are each hereby awarded a Case Contribution Award in the amount of $10,000.

15. In making this award of attorney's fees and reimbursement of expenses, and the Case Contribution Awards to Named Plaintiffs, the Court has considered and found that:

(a) The Settlement achieved as a result of the efforts of Co-Lead Class Counsel has created a fund of $22.5 million in cash which will benefit tens of thousands of Settlement Subclass members;

(b) Co-Lead Class Counsel have conducted the litigation and achieved the Settlement with skill, perseverance, and diligent advocacy;

(c) The Action involves complex factual and legal

issues prosecuted over several years and, in the absence of a settlement, would involve further lengthy proceedings with uncertain resolution of the complex factual and legal issues;

(d) Had Co-Lead Class Counsel not achieved the Settlement, there would remain a significant risk that Named Plaintiffs and the Settlement Subclasses might have recovered less or nothing from Defendants; and

(e) The amount of attorney's fees awarded and expenses reimbursed from the Qualified Settlement Fund are consistent with awards in similar cases, and Named Plaintiffs rendered valuable service to the Plans and to the Settlement Subclass members.

16. As set forth in Section 7 of the Settlement Agreement, Plaintiffs, members of the Settlement Subclasses, and Defendants are directed not to offer the Settlement Agreement or its terms in any action or proceeding for any purpose except as permitted by Sections 7.2 and 7.3 of the Settlement Agreement. The Settlement Agreement, this Final Approval Order, and the Judgment in this case shall not be considered or used as an admission, concession, or declaration by or against any Releasee of any fault, wrongdoing, breach or liability, and this Court makes no such finding or determination.

17. If the Settlement does not become Final in accordance with the terms of the Settlement Agreement, the Final Judgment shall be rendered null and void to the extent provided by and in accordance with the Settlement Agreement and shall be

vacated accordingly nunc pro tunc.

18. This Order and the Judgment in this case shall be a Final Judgment as to all claims in the case. Subject to and governed by the express provisions of Sections 4.1 through 4.4 of the Settlement Agreement, including, without limitation, the exclusion of the "Carved Out Actions" as defined in Section 4.1, the provisions for "Claims Not Released" in Section 4.3, and the provisions of Section 4.4, Judgment shall be entered approving the Settlement, and this Action and all individual and class claims resolved in it are hereby DISMISSED ON THE MERITS AND WITH PREJUDICE against Plaintiffs, including all Subclass members.

19. Without affecting the finality of the Judgment in any way, the Court retains jurisdiction over this matter solely with respect to the implementation of the Settlement and the Settlement Agreement and the distribution of the Qualified Settlement Fund.

So ordered this 24th day of December, 2014.

s/ Samuel H. Mays, Jr.
SAMUEL H. MAYS, JR.
UNITED STATES DISTRICT JUDGE