

819 (3d Cir. 1995). This is especially true where 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) (citing Weinberger v. Great N. Nekoosa Corp., 925 F.2d 518, 524 (1st Cir.1991)) (internal quotations omitted) ("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 settlements such as this one, consisting of a damages award distributed from a common fund, 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. As the lodestar calculation serves merely 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) (citing Gunter, 223 F.3d at 200) (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 Plaintiffs’ petition. In light of the risks of further litigation, the negotiated Settlement Fund of \$12,500,000 represents a substantial benefit to the 73,738 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. 181.*) Litigation in this matter has been protracted and complex, spanning more than four years. Class Counsel’s contingent fee depended on Plaintiffs prevailing in this matter, which was by no

means certain. Class Counsel have devoted 3,860 hours to litigating this case over the past four years, filing numerous briefs and conducting discovery. The fees requested, which constitute 30% of the Settlement Fund, resemble awards in similar cases. See 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 in this matter without the aid of any other group, such as a government agency. The requested fee award of 30% of the Settlement is consistent with privately negotiated fee awards. See, e.g., In re Ikon Office Solutions, Inc., 194 F.R.D. 166, 194 (E.D. Pa. 2000) (finding that in contingent fee cases, fee agreements routinely provided for “between thirty and forty percent of any recovery”). 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 in a case 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 \$1,825,370.80, resulting in a multiplier of 2.05. (*Doc. No. 180 at 42.*) In support of this calculation, Counsel provide a detailed summary of each attorney’s experience in the field, as well as his or her time spent on this matter. (*Doc. No. 181 Exs. D-I.*) Class Counsel’s calculations are conservative, as they do not take into account work done on behalf of this Class on a matter in the Northern District of California, which was voluntarily dismissed and refiled in this Court. Nor do they account for the future work Class Counsel will undertake in implementing the Settlement.

“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 may vary, and I should take this into account. See Mercedes-Benz, 214 F.R.D. at 310 (applying blended rate in lodestar calculation reflecting average of attorneys’ actual hourly billing rates). The hourly rates used in the lodestar calculation reasonably range from \$300 per hour for an associate to \$675 per hour for an experienced partner. (*Doc. No. 181 Exs. D-I.*) The resulting multiplier of 2.05 is well within the range of multipliers approved in this Circuit as reasonable. See, e.g., PRIDES, 243 F.3d at 742 (suggesting a lodestar multiplier of 3 “is the appropriate ceiling for a fee award”).

AND NOW, this 7th day of February, 2013, on consideration of Plaintiffs’ Unopposed Motion for an Award of Attorneys’ Fees, Litigation Costs and Case Contribution Awards for the Named Plaintiffs (*Doc. No. 180.*), and having found the Settlement of this matter to be fair, reasonable, and adequate, **IT IS HEREBY ORDERED:**

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 March 27, 2012 and filed with the Court on May 16, 2012.

3. Plaintiffs’ Counsel are awarded attorney fees in the amount of \$3,750,000.00 and reimbursement of litigation expenses in the sum of \$355,477.74, 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 \$7,500.00 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