

This amount awarded as attorneys' fees and reimbursement of litigation expenses shall be paid from the Class Settlement Fund, and shall be distributed in accordance with the agreements entered into among Plaintiffs' Class Counsel.

The Court finds that the award of such attorney's fees and expenses is justified in light of the seven factors which the First Circuit has directed trial courts to consider when evaluating such requests. *Coutin v. Young & Rubicam P.R.*, 124 F.3d 331, 337 n. 3 (1st Cir. 1997) (citing *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974), and *Segal v. Gilbert Color Sys., Inc.*, 746 F.2d 78, 86 (1st Cir. 1984).) The *Johnson* factors are: time and labor required; novelty and difficulty of questions; skill requisite to perform legal services properly; preclusion of other employment by attorney due to acceptance of case; customary fee; whether it is fixed or contingent; time limitations imposed by client or circumstances; amount involved and results obtained; experience, reputation, and ability of attorney; undesirability of case; nature and length of professional relationship with client; and size of awards in similar cases.

A. Time and Labor Required

The Court finds that Class Counsel and their staffs expended 3,358.2 hours in the prosecution and settlement of this case. The Court finds that this was a significant effort which resulted in favorable results for the Class Members.

B. Novelty and Difficulty of Questions Presented

Prosecution of this case required Class Counsel with experience and understanding of complex litigation, the economics and financial aspects of the annuities at issue, as well as the legal issues presented by conduct which affects the creditworthiness of financial devices but that has not, at least as of now, caused a default on any payments. The Court finds that this *Johnson* factor supports Class Counsel's fee request.

C. Skill Requisite to Perform Legal Services Properly and Experience, Reputation, and Ability of Attorney

In evaluating the skill and efficiency of the attorneys involved, courts look to “the quality of the result achieved, the difficulties faced, the speed and efficiency of the recovery, the standing, experience and expertise of the counsel, the skill and professionalism with which counsel prosecuted the case and the performance and quality of opposing counsel.” *Alexander v. Washington Mutual, Inc.*, No. 07-4426, 2012 WL 6021103, at *3 (E.D. Pa. Dec. 4, 2012). The result obtained is in large measure a reflection of the skill and tenacity with which Class Counsel prosecuted this litigation.

The Court finds that Class Counsel achieved significant benefits for Class Members, in the face of significant factual, legal, and financial obstacles in pursuing this litigation. The Court finds that Class Counsel have established and deserved reputations as highly competent class action attorneys, and that the Krasnoo, Klehm & Falkner LLP, firm has served efficiently as local counsel, performing all of the duties required by that role.

Accordingly, the Court finds that this *Johnson* factor favors the award of the requested fee.

D. Preclusion of Other Employment by Attorney Due to Acceptance of Case

The Court finds that the 3,300 plus hours expended by Plaintiff’s counsel in the prosecution of this case could and would have been spent pursuing and prosecuting other cases but for the acceptance of this case. While not a factor that weighs heavily in favor of Class Counsel’s fee request, the Court finds that this factor that does provide some support the request.

E. Customary Fee and Whether the Fee Is Fixed or Contingent

The Court finds that the fee was completely contingent on the outcome and was not fixed, and that Plaintiff's counsel have worked on this case for over four years without yet having been compensated in any way. Thus, this factor supports the request.

F. Amount Involved and Results Obtained

The Court finds that the value of the Settlements is reasonably estimated to be at least \$34.3 million, and that this represents a significant and valuable result attained for the Class

This *Johnson* factor is easily satisfied.

G. Undesirability of Case

The Court finds that complexity of issues and duration of the case were significant, and that Class Counsel conducted extensive discovery, reviewed thousands of pages of documents, traveled throughout the United States and to England to conduct multiple depositions, and retained multiple experts to analyze the liability and damages issues. The Court finds that no other case was filed by lawyers pursuing the same claims against Defendants, and finds further that it suggests the undesirability of the litigation and the commitment of Class Counsel. The Court finds that this factor favors the requested fee award.

H. Size of Awards in Similar Cases

The Court concludes that a contingent fee, using the Percentage of Recovery method, is appropriately used in those cases where the value of the recovery attained can be assessed reasonably and where the recovery attained is definite rather than contingent on a claims process or the occurrence of other, contingent, events. The Court finds that under the Percentage of Recovery method, a fee of between 20% and 30% of the value of the settlement

would be appropriate. See *In re Celexa & Lexapro Mktg. & Sales Practices Litig.*, No. MDL No. 09-2067-NMG, 2014 U.S. Dist. LEXIS 125041 (D. Mass. Sep. 8, 2014). In this regard the Court finds that comparison is appropriately drawn between this case and several other cases, cited by Plaintiff, involving class action recoveries with both cash and noncash components but where the value of the noncash relief can be assessed reliably. In these cases as well, the attorney's fee was assessed by reference to the percentage of recovery method. *In re Certainteed Fiber Cement Siding Litig.*, 303 F.R.D. 199 (E.D. Pa. 2014); *In re Am. Investors Life Ins. Co. Annuity Mktg & Sales Practices Litig.*, 263 F.R.D. 226 (E.D. Pa 2009); *Varacallo v. Mass. Mut. Life Ins. Co.*, 226 F.R.D. 207 (D.N.J. 2005). The 12% fee requested by Plaintiff's counsel is reasonable under this metric.

In addition, however, the Court also relies on the lodestar method for assessing the fee requested by Plaintiff's counsel, as that method has been applied in cases similar to this one. The Court finds that attorney's fee sought here is also appropriate under the lodestar method. The cases hold that that approach to award of attorney's fees in class actions is appropriate as a cross-check when the percentage of recover method is used, and as the primary basis for calculation when the percentage of recovery method cannot be applied. Under this method, the court determines the fee award by "ascertain[ing] the number of hours productively expended and multiply[ing] that time by reasonable hourly rates." *Spooner v. EEN, Inc.*, 644 F.3d 62, 68 (1st Cir. 2011). Then, the court applies a multiplier to the lodestar to account for a variety of contingency factors, including the risk, the result achieved, the quality of representation and the complexity and magnitude of the litigation. See, e.g., *In re TJX Companies Retail Sec Breach Litigation*, 584 F. Supp. 2d 395, 408 (D. Mass. 2008) (applying lodestar multiplier of 1.97); *In re Tyco Int'l, Ltd. Multidistrict Litig.*, 535 F. Supp. 2d 249, 271 (D.N.H. 2007) (applying

lodestar multiplier of 2.697)); *In re Relafen*, 231 F.R.D. at 82 (“A multiplier of 2.02 is appropriate.”).

In the *Certainfeed* case, which dealt with breach of a product warranty, a multiplier of 2.6 was found appropriate. 303 F.R.D. at 225. In *In re American Investors Life Ins. Co.*, the Court awarded a multiplier of 2.3, which it found “safely within the [appropriate] range.” 263 F.R.D. at 245. *Varacallo* adopted a multiplier of 2.83. 226 F.R.D. at 256.

On the basis of this analysis the Court finds that the lodestar “cross-check” also supports Class Counsel’s reasonable attorney fee request. The Court finds that Plaintiff’s lodestar is \$2,091,973.50, which represents a total of 3,358 hours of work. The Court finds that Plaintiff’s counsel have computed the value of their time using hourly rates paid by their hourly clients, or by adverse parties who have agreed to pay attorney’s fees, or rates that have been adopted by other courts which have granted fee petitions submitted by Plaintiff’s counsel.

The Court finds that the multiplier requested by Plaintiff’s counsel, of 1.98, is reasonable, and that a total fee of \$4,155,123.27 is appropriate here.

The Court finds that the expenses incurred and advanced by Plaintiff’s counsel are reasonable, and orders that they be reimbursed from the Settlement Fund, in the amount of \$144,826.73.

Finally, the Court finds that an individual service award to the Representative Plaintiff for representing the Class is warranted under the circumstances of this case and is approved by the Court. Class Counsel recommend that the Court approve an award of \$25,000 to the named plaintiff, John W. Griffiths. The Court finds that, on his own, the Representative Plaintiff investigated and discovered the facts giving rise to this case; that he searched for and found

counsel to prosecute the case, and that he found counsel competent to do so; that he worked with such counsel throughout the case, both in producing discovery and in monitoring the progress of the case and of settlement negotiations. The Class Representative undertook the obligations of this action, including providing information and conferring with and advising counsel with respect to all aspects of the litigation and settlement. *See e.g. Cullen v. Whitman Medical Corp.*, 197 F.R.D. 136, 145 (E.D. Pa. 2000) ("[C]ourts routinely approve incentive awards to compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation.") *quoting In re S. Ohio Corr. Facility*, 175 F.R.D. 270, 272 (S.D. Ohio 1997).

The court finds that the exceptional degree of labor performed by the Class Representative, in investigating and then seeing to the prosecution of these claims, makes the requested Service Award appropriate, particularly inasmuch as it is borne by Defendants and will not reduce the extent of relief available to the absent class members. *See Ark. Teachers Retirement Sys. v. State St. Bank & Trust Co.*, 2018 U.S. Dist. LEXIS 111409 (D. Mass. June 28, 2018)(awarding \$25,000 to Class Representative who discovered the claim and rendered extensive assistance to class counsel); *In re Lupron (R) Mktg & Sales Practices Litig.*, 228 F.R.D. 75, 49 (D. Mass. 2005) (awarding \$25,000 to those named plaintiffs who were deposed).

IT IS SO ORDERED.

Dated: _____, 2018

BY THE COURT:

HON. Nathaniel M. Gorton, J.