

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA

IN RE WACHOVIA CORPORATION  
ERISA LITIGATION

MASTER FILE: 3:09-CV-00262-MR

THIS DOCUMENT RELATES TO:  
All Actions

**[PROPOSED] FINAL ORDER AND JUDGMENT**

This Action involves claims for alleged violations of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. §§ 1001, et seq. (“ERISA”), with respect to the Wachovia Savings Plan and the A.G. Edwards, Inc. Retirement and Profit Sharing Plan (collectively, the “Plans”), defined contribution plans intended to satisfy the requirements of Section 401 of the Internal Revenue Code.

This matter came before the Court for a hearing pursuant to the Preliminary Approval Order of this Court entered on March 2, 2011, on the application of the Parties for final approval of the Settlement set forth in the Class Action Settlement Agreement (“Settlement Agreement”), executed on February 10, 2011, and filed

with the Court on February 11, 2011.<sup>1</sup> Subsequently amended on and filed with the Court on February 28, 2011.

Before the Court are: (1) Plaintiffs' Motion for Final Approval of ERISA Class Action Settlement, for Settlement Class Certification, and for approval of Plan of Allocation ("Final Approval Motion"); and (2) Class Counsel's Motion for Award of Attorneys' Fees and Expenses and Named Plaintiff Case Contribution Awards ("Fee and Expense Motion").

The Court has received declarations attesting to the mailing of the Class Notice and the posting of the Internet/Publication Notice in accordance with the Preliminary Approval Order.

The Court also has received a declaration attesting to the mailing of the notices pursuant to the Class Action Fairness Act of 2005 ("CAFA"), and has received a statement from the Independent Fiduciary stating that it has determined that all of the conditions of Prohibited Transaction Exemption 2003-39, "Release of Claims and Extensions of Credit in Connection with Litigation," issued December 31, 2003, by the United States Department of Labor, 68 Fed. Reg. 75,632 (the "Class Exemption") have been satisfied and that the Plans should participate in the Settlement and grant a release on behalf of the Plans as to all Releasees as stated in the Settlement Agreement.

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<sup>1</sup> All capitalized terms used in this Final Order and Judgment and not defined herein shall have the meanings assigned to them in the Settlement Agreement.

Due and adequate notice has been given to the Settlement Class as required in the Preliminary Approval Order, and the Court has considered all papers filed and proceedings in this case, and is otherwise fully informed in the premises. IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. This Court has jurisdiction over the subject matter of this Action and over all Parties to the Action, including all members of the Settlement Class.
2. On April 1, 2011, 159,759 copies of the Class Notice were mailed via U.S. mail to Settlement Class members.
3. In accordance with the Court's Preliminary Approval Order, the Class Notice and Settlement Agreement were posted on [www.erisafraud.com](http://www.erisafraud.com) and [www.kellersettlements.com](http://www.kellersettlements.com).
4. The Class Notice and the Internet/Publication Notice fully informed Settlement Class members of their rights with respect to the Settlement, including the right to object to the Settlement, Class Counsel's application for an award of attorneys' fees, reimbursement of expenses, and for the payment of Case Contribution Awards to Named Plaintiffs, all from the Qualified Settlement Fund.
5. The Class Notice and Internet/Publication Notice collectively met the statutory requirements of notice under the circumstances, including the individual notice to all members of the Settlement Class who could be identified through

reasonable effort, and fully satisfied the requirements of Federal Rule of Civil Procedure 23 and the requirement of due process.

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

7. This Action and all claims asserted in it, as well as all of the Released Claims, are dismissed with prejudice as to Named Plaintiffs, the Settlement Class members, and the Plans, and as against the Releasees. The Parties are to bear their own costs, except as otherwise provided in the Settlement Agreement.

8. The Court finds that the Settlement is fair, reasonable, and adequate as to each member of the Settlement Class, and that the Settlement is either: (a) not a prohibited transaction under ERISA; or (b) is exempt from ERISA's prohibited transaction provisions pursuant to applicable law or rules. The Settlement is finally approved in all respects. The Parties are directed to implement the Settlement in accordance with the terms and conditions of the Settlement Agreement.

9. As set forth in Section 4.1.1 of the Settlement Agreement, Named Plaintiffs on behalf of themselves and on behalf of the Settlement Class absolutely and unconditionally release and forever discharge the Releasees from any and all Released Claims that Plaintiffs or the Settlement Class directly, indirectly, derivatively, or in any other capacity ever had, now have or hereafter may have.

As set forth in Section 4.1.2 of the Settlement Agreement, the Independent Fiduciary's approval of the Settlement shall constitute a release of any Released Claims the Plans may have against the Releasees. As set forth in Section 4.1.3 of the Settlement Agreement, upon the Effective Date of Settlement, Defendants absolutely and unconditionally release and forever discharge Named Plaintiffs, the Settlement Class and Class Counsel from any and all claims relating to the institution or prosecution of the Action.

10. The Plan of Allocation is approved as fair and reasonable. Class Counsel and the Allocation Administrator are directed to allocate the Class Settlement Amount in accordance with the Settlement Agreement. Any modification or change in the Plan of Allocation that may hereafter be approved shall in no way disturb or affect this Judgment and shall be considered separate from this Judgment.

11. Class Counsel is hereby awarded attorneys' fees in the amount of \_\_\_\_\_% of the Qualified Settlement Fund, which the Court finds to be fair and reasonable, and \$ \_\_\_\_\_ in reimbursement of Class Counsel's reasonable expenses incurred in prosecuting the Action. The attorneys' fees and expenses so awarded shall be paid from the Qualified Settlement Fund pursuant to the terms of the Settlement Agreement. All fees and expenses paid to Class

Counsel shall be paid pursuant to the timing requirements described in the Settlement Agreement.

12. Named Plaintiffs are each hereby awarded a Case Contribution Award in the amount of \$\_\_\_\_\_.

13. In making this award of attorneys' 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 Class Counsel has created a fund of \$12.35 million in cash that is already on deposit, plus interest thereon, and will benefit thousands of Settlement Class members;
- b) 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 Class Counsel not achieved the Settlement, there would remain a significant risk that Named Plaintiffs and the Settlement Class may have recovered less or nothing from Defendants;

e) The amount of attorneys' fees awarded and expenses reimbursed from the Qualified Settlement Fund are consistent with awards in similar cases; and

f) Named Plaintiffs rendered valuable service to the Plans and to Settlement Class members.

14. Neither the Settlement Agreement nor the terms of the Settlement Agreement shall be offered or received in any action or proceeding for any purposes, except: (a) in an action or proceeding arising under the Settlement Agreement or arising out of or relating to the Preliminary Approval Order or the Final Order; (b) in any action or proceeding where the releases provided pursuant to the Settlement Agreement may serve as a bar to recovery; or (c) in any action or proceeding to determine the availability, scope, or extent of insurance coverage (or reinsurance related to such coverage) for the sums expended for the settlement and defense of the Action.

15. Without affecting the finality of this Judgment in any way, this Court hereby retains continuing jurisdiction over: (a) implementation of the Settlement and any award or distribution of the Qualified Settlement Fund, including interest earned thereon; (b) disposition of the Qualified Settlement Fund; (c) hearing and determining applications for attorneys' fees, costs, interest and reimbursement of expenses in the Action; and (d) all Parties hereto for the purpose of construing, enforcing and administering the Settlement.

16. The Court finds that during the course of the Action, Named Plaintiffs and Defendants and their respective counsel at all times complied with the requirements of Federal Rule of Civil Procedure 11.

17. This Order and Judgment shall not be considered or used as an admission, concession, or declaration by or against Releasees of any fault, wrongdoing, breach or liability and this Court makes no such finding or determination. Neither the Settlement Agreement nor any of the proceedings in connection therewith shall be offered or received in evidence for any purpose, except that Releasees may submit this Final Order and Judgment to support a claim of res judicata, collateral estoppel, release or any theory of claim or issue preclusion, or they may submit this Final Order and Judgment in any action to enforce the injunctive provisions of Paragraph 9 above.

18. In the event that the Settlement does not become effective in accordance with the terms of the Settlement Agreement, then this Judgment shall be rendered null and void to the extent provided by and in accordance with the Settlement Agreement and shall be vacated, and in such event, all orders entered and releases delivered shall be void to the extent provided by and in accordance with the Settlement Agreement.

19. Final Judgment shall be entered herein approving the Settlement of this Action.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

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The Honorable Martin Reidinger  
United States District Court Judge