

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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In Re:

POLAROID ERISA LITIGATION

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This Document Relates to:

ALL ACTIONS

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Master File No.
03 Civ. 8335 (WHP)

MEMORANDUM AND ORDER

WILLIAM H. PAULEY III, District Judge:

On June 22, 2007 this Court granted final approval to a settlement of all claims in this action. Plaintiffs now move for an award of attorneys' fees, reimbursement of expenses, and compensation to class representatives. For the following reasons, Plaintiffs' motion is granted.

BACKGROUND

On May 22, 2007 Plaintiffs moved for \$4.5 million in attorneys' fees, comprising 30% of the \$15 million paid by Defendants in settlement of all claims in this action. The \$4.5 million was to account for a total of 16,245 attorney-hours worked – 7,332 by Keller Rohrback L.L.P ("Keller Rohrback"), 8,524 by Schiffrin Barroway Topaz & Kessler ("SBTK") and 389 by the Law Offices of Curtis v. Trinko (the "Trinko Firm"). (Declaration of Co-Lead Counsel dated May 18, 2007 ("Co-Lead Counsel Decl.") ¶ 67.) It also included compensation for 5,118 hours worked by supporting professionals, including 4,577 attributable to Keller Rohrback, 426 attributable to SBTK and 115 attributable to the Trinko Firm. (Co-Lead Counsel Decl. ¶ 67.)

In addition, Plaintiffs sought reimbursement of \$883,742.14 in out-of-pocket expenses, including \$335,462.92 attributable to expert witness and consultant fees and

\$44,388.50 attributable to an “expense line of credit” established by Keller Rohrback for litigation-related purposes. (Co-Lead Counsel Decl. ¶ 71.) Plaintiffs also sought payment of \$10,000 to each of the three Lead Plaintiffs in this action – Otis D. Powers, Bradford W. Pires and Robert D. Correia – to compensate them for their efforts on behalf of the class. (Co-Lead Counsel Decl. ¶ 75.)

The Court heard argument on the motion for attorneys’ fees at the final settlement approval hearing on June 22, 2007. At that time, the Court voiced certain concerns with respect to the fee application. Specifically, the Court noted a dearth of supporting information in the Declaration of Co-Lead Counsel, particularly with regard to the number of attorney hours claimed by SBTK. The number of hours was especially remarkable when juxtaposed with the parsimonious use of paralegals. Further, the Court raised questions about several reimbursement requests, including those for expert and consulting fees and Keller Rohrback’s expense line of credit, as well as the appropriateness of \$10,000 payments to Lead Plaintiffs Powers, Pires and Correia. The Court directed the parties to file supplemental declarations addressing these issues.

On July 13, 2007, Keller Rohrback, SBTK and the Trinko Firm each submitted a supplemental declaration in support of the pending motion. Each firm provided detailed information on the names, seniority and responsibilities of all lawyers who worked on this action. SBTK explained that it had made extensive use of contract attorneys in lieu of paralegals and advised the Court that it would give “great[] consideration” to modifying this practice in the future. (Supplemental Declaration of Joseph H. Meltzer, dated July 12, 2007 (“Meltzer Decl.”) ¶ 25.) Keller Rohrback provided detailed support for its request for reimbursement of payments made to experts and other consultants. (Supplemental Declaration of Derek W. Loeser, dated

July 12, 2007 (“Loeser Decl.”) ¶¶ 36-42.) It also agreed to withdraw its request for \$44,388.50 in interest on its expense line of credit. (Loeser Decl. ¶ 44.)

Importantly, all counsel agreed to reduce their fee request from 30% to 28% of the total settlement amount, which would yield a total payment of \$4.2 million. (Loeser Decl. ¶ 46; Meltzer Decl. ¶ 44.) Lead Plaintiffs Powers, Pires and Correia each also submitted declarations detailing the extent of their involvement in this case. Among other things, Lead Plaintiffs consulted extensively with counsel, had their depositions taken, attended conferences and arguments before the Court, and reviewed pleadings and motions. (Declaration of Otis D. Powers, dated May 17, 2007; Declaration of Bradford W. Pires, dated May 17, 2007; Declaration of Robert Correia, dated May 17, 2007; Supplemental Declaration of Otis D. Powers, dated July 9, 2007; Supplemental Declaration of Bradford W. Pires, dated July 10, 2007; Supplemental Declaration of Robert Correia, dated July 12, 2007.)

DISCUSSION

I. Attorneys’ Fees

Courts may choose between two distinct methods to calculate a reasonable attorneys’ fee in the class action context. The first is the lodestar method, under which the court scrutinizes the fee petition to ascertain the number of hours reasonably billed to the Plaintiff and then multiplies that figure by an appropriate hourly rate. See Goldberger v. Integrated Resources, Inc., 209 F.3d 43, 47 (2d Cir. 2000); Savoie v. Merchants Bank, 166 F.3d 456, 460 (2d Cir. 1999). Moreover, a multiplier is typically applied to the lodestar. The multiplier represents the risk of the litigation, the complexity of the issues, the contingent nature of the engagement, the skill of the attorneys, and other factors. See Goldberger, 209 F.3d at 47; In re

Global Crossing Sec. & ERISA Litig., 225 F.R.D. 436, 468 (S.D.N.Y. 2004). Warner Communications Sec. Litig., 618 F. Supp. 735, 749 (S.D.N.Y. 1985).

The second method of calculating a reasonable attorneys' fee is known as the percentage of recovery method. See Goldberger, 209 F.3d at 47; Savoie, 166 F.3d at 460. Under this method, the court sets some percentage of the recovery as a fee, and in determining what percentage to award, looks to the same "less objective" factors that are used to determine the multiplier for the lodestar.

While this Court has discretion to choose between the lodestar method and the percentage of recovery method, "[t]he trend in this Circuit is toward the percentage method, which directly aligns the interests of the class and its counsel and provides a powerful incentive for the efficient prosecution and early resolution of litigation." In re WorldCom, Inc. ERISA Litig., No. 02 Civ. 4816, 2005 U.S. Dist. LEXIS 28686, at *23-24 (S.D.N.Y. Nov. 21, 2005) (quoting Wal-Mart Stores, Inc. v. Visa U.S.A., Inc., 396 F.3d 96, 121 (2d Cir. 2005)). No matter which method is chosen, the Court is guided by the traditional criteria in determining a reasonable fee, including: (1) the time and labor expended by counsel; (2) the magnitude and complexities of the litigation; (3) the risk of the litigation; (4) the quality of representation; (5) the requested fee in relation to the settlement; and (6) public policy considerations. Goldberger, 209 F.3d at 50. The Court considers each of these factors in turn.

Based on the information in their submissions, Plaintiffs' counsel worked a total of approximately 16,245 hours, while supporting professionals worked approximately 5,118 hours on this case. If the 4,232 hours claimed by SBTk for contract attorneys are treated as paralegal time, lawyer hours decline to 12,013 and paralegal hours increase to 9,350. (Meltzer Decl. ¶ 26.) In any event, a fee of \$4.2 million yields a blended hourly rate for all professionals

and lawyers of approximately \$197 per hour. This was a large ERISA class action involving complex and evolving areas of the law. The case required significant discovery, including the exchange and review of hundreds of thousands of pages of documents and over twenty depositions, as well as expert discovery. It also involved voluminous and complicated motion practice. There was a significant risk of loss for the plaintiffs, despite the fact that they retained counsel of high quality. For these reasons, the Court finds that Plaintiffs' counsel's decision to reduce their fee request to 28% of the total amount of settlement – amounting to \$4.2 million – is well-advised and that such a fee is reasonable. Moreover, the Court notes that based on counsel's modified collective lodestar of approximately \$7.25 million (which reflects treatment of SBTK's contract attorneys as paralegals), the \$4.2 million fee represents a multiplier of approximately .58, which is well within the range of fees previously approved by this Court. See, e.g., Warner, 618 F. Supp. at 749; Global Crossing, 225 F.R.D. at 468.

II. Reimbursement of Expenses

In their revised application, Plaintiffs seek reimbursement of \$839,353.64 in litigation expenses. “Attorneys may be compensated for reasonable out-of-pocket expenses incurred and customarily charged to their clients.” Mitland Raleigh-Durham v. Myers, 840 F. Supp. 235, 239 (S.D.N.Y. 1993). Having reviewed Plaintiffs' supplemental submissions in support of their application, the Court is satisfied that the expenses incurred were reasonable. Accordingly, the motion for reimbursement of \$839,353.64 in litigation expenses is granted.

III. Compensation of Class Representatives


Plaintiffs Robert Correia, Bradford W. Pires and Otis D. Powers have submitted declarations claiming that they incurred expenses and provided services for the sake of the class sufficient to justify compensation of \$10,000 to each of them. \$10,000 is within the range of awards courts have found acceptable for representative class members. See, e.g., Dornberger v. Metropolitan Life Ins. Co., 203 F.R.D. 118 (S.D.N.Y. 2001) (noting case law supports payments of between \$2,500 and \$85,000 to representative plaintiffs in class actions); Spann v. AOL Time Warner, No. 02 Civ. 8238, 2005 U.S. Dist. LEXIS 10848 (S.D.N.Y. June 7, 2005) (awarding class representatives \$10,000 each in compensation for services rendered to the class). Accordingly, Plaintiffs' application for \$10,000 in compensation to each of Plaintiffs Correa, Pires and Powers is granted.

CONCLUSION

For the foregoing reasons, Plaintiffs' motion for \$4.2 million in attorneys' fees and \$839,353.64 in expenses is granted. The motion for \$10,000 in compensation to Lead Plaintiffs Powers, Pires and Correia is also granted. The Clerk of the Court is directed to mark this case closed.

Dated: July 19, 2007
New York, New York

SO ORDERED:


WILLIAM H. PAULEY III
U.S.D.J.

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