UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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NEW JERSEY CARPENTERS HEALTH FUND, on behalf of itself and all others similarly situated,

Plaintiffs,

v.

RALI SERIES 2006-QO1, et al.,

Defendants.

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New York, N.Y.

08 Civ. 8781(KPF)

July 31, 2015
2:40 p.m.

Before:

HON. KATHERINE P. FAILLA,

District Judge

APPEARANCES

COHEN, MILSTEIN, SELLERS & TOLL, PLLC
Attorneys for Plaintiffs
BY: JOEL P. LAITMAN
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Attorneys for Intervenor Plaintiff
BY: ROBIN F. ZWERLING

(Case called; all parties present)

THE COURT: I think last time I saw you, we were scheduling a summary judgment motion. Suffice it to say, I am so pleased to see you all here in this context instead.

Mr. Laitman, will you be take the laboring oar today, sir?

MR. LAITMAN: Yes.

THE COURT: I believe we are here today for several things, including the final approval, or not, of the settlement; a review of the plan of allocation; a review of the advocacy of the notice to the class; a review of the decision regarding class certification for settlement purposes; and then the review of the requested attorney's fees and expenses.

Is that correct, sir?

MR. LAITMAN: That's correct.

THE COURT: Sir, when last I checked, there were a few folks -- 11 or so -- who were not participating in the settlement, had excluded themselves.

MR. LAITMAN: Yes.

THE COURT: I got the sense, but I would appreciate some clarification, is that largely a function of other litigations they have?

MR. LAITMAN: That is other litigations. Primarily those were other litigations they had, but those 11 exclusions are in the context of 4200 proofs of claim, and actually this

is one of the highest participation rates we have seen. We mailed out 8,000 notices, and we actually have 4200 proofs of claim and no objections.

THE COURT: I did notice that, sir, but am I correct it is approximately 11?

MR. LAITMAN: It is 11, yes.

THE COURT: Actually you have anticipated my next question, which was, the materials that you gave me most recently indicated that there were no objections. There are still no objections?

MR. LAITMAN: There are still no objections, and I just want to note for the record that there are no objectors in the courtroom today.

THE COURT: That is correct. Unless Ms. Zwerling is going to suddenly change sides, I think that is correct.

I am not balking at your 8,000 notices. The most recent class I certified was in the Red Bull class action. That was a 2 million member class, so I think I had 30 objectors in 2 million, which beats yours ever so slightly by percentages, but very interesting nonetheless.

I have a very large binder, which you can see me holding up right now. I have reviewed the materials in it, but I would be happy to hear from you on anything regarding the fairness of the settlement. That's where I would like to talk right now.

MR. LAITMAN: Okay. Would you prefer if I stood or?

THE COURT: Because of the placement of that monitor, standing is better for me, yes. Thank you.

MR. LAITMAN: Okay. In terms of the fairness decision -- and, again, when we are talking about the final approval of the settlement, we are dealing only now with the $235 million settlement with the underwriter defendants, that is, UBS, Citigroup, and Goldman Sachs.

The $100 million settlement is a partial settlement that was reached with the ResCap defendants. That was approved by Judge Baer previously and the notice was approved. So when we talk about approval of the final settlement, we are dealing with the 235.

There is really a two-part standard for fairness of a settlement, as your Honor knows. One is procedural of what fairness -- was the settlement reached on an arm's length basis. In this case, the record is very clear, Judge Weinstein, who is a nationally recognized mediator, worked with the parties literally for years and has submitted an affidavit in support of the settlement, attesting to the fact that it was a very vigorously contested case and very much arm's length. So the procedural fairness point is satisfied, I believe. There is not really a question as to that.

The second piece is the substantive fairness, and that requires consideration of the nine Grinnell factors. Those

factors, I can go through them, but I can just talk about it generally.

THE COURT: I think that is fine. I promise you I have read it. The issue is if there are things in particular you would like to emphasize, now is your chance.

MR. LAITMAN: Okay. The one thing I would emphasize that is something very, very unusual about this case is that when it was started in 2008, there really wasn't a precedent for mortgage-backed securities class actions, and so many of the fundamental legal issues were really untested, and one of them is standing. You don't usually litigate for years the standing issue. However, in the mortgage-backed securities context, how many offerings could be represented by a class representative was something that was a moving target over the last seven years.

Originally the complaint had 59 offerings. The initial motion to dismiss brought it down to four, then it went up to 18. Another motion to dismiss on statute of limitations grounds, which is another issue, brought it down to 16. So the novelty added to the enormous complexity of the case in terms of standing.

But the other issue that was untested was class certification. We have had never had a class certified. This class is composed of many institutional investors who are sophisticated, and the issue was raised as to whether they had

knowledge which may have precluded them being in the class, precluded the predominance factor under Rule 23 being satisfied. And so that complexity in this case caused the initial denial of class certification. So in 2011 the case was effectively over.

We petitioned the Second Circuit under 23(f). They granted it. We went up on appeal. They actually affirmed the denial of class certification, but left open a possibility of discovery, which we pursued, and ultimately got a class certified. But, again, this was a novel action, something which doesn't normally get litigated two or three times; but it did get litigated two or three times in a very unusual way, and it goes a long way to explain the very complex legal history, the enormous amount of time that was spent, even before we got to the merits, which your Honor saw in the summary judgment motions and in the Daubert motions which by themselves were very complex because it involved so many different offerings, so many different mortgage loan originators.

So I think, in essence, if I had to emphasize anything about the fairness of the settlement, it was achieved almost after enormous work on novel issues, where both sides recognized the complexity and the benefit of settlement. Because, at the end of the day, our case in proving liability rested on sampling and the expert re-underwriting, which is a difficult issue. Defendants also very much were putting forth

the ability to reduce damages because of loss causation, that losses were caused by some factors other than the misstatements in the offering documents.

So when the settlement was achieved, because so much litigation had gone on before the district court and the Second Circuit, the parties well understood the risks. Again, it was done on an arm's length basis, and I think it is an excellent result comparatively among all of the other mortgage-backed securities cases.

THE COURT: Can we talk a little bit about the plan of allocation? I find it very complicated, but I suppose that is the point. I imagine it is that complicated precisely because there are more than 4,000 folks who will be participating. Or are all 8,000 --

MR. LAITMAN: 4,000 claims.

THE COURT: Claims, yes. They are the ones who get to partake of this and, yet, their claims are, on some level, very highly individualized; therefore, your economic expert was trying to recognize that in setting forth the plan of allocation.

MR. LAITMAN: The basic structure is not that complicated. You are right that it is complicated, but the basic structure really tracks the class certification decisions of Judge Baer. So he basically decided, certified --

THE COURT: "He" who, sir?

MR. LAITMAN: Judge Baer, the late Judge Baer certified a limited ten-day class of people who bought directly from the underwriters or their agents.

So that left an entire group that might normally be in a Section 11 or Section 12 case, that is, people who could trace their purchase, who bought after ten days, who could trace their purchase to the offering, that left them out of the settlement.

And then there is a third group. So you have ten days, you have people outside of ten days, and then you have another group of the people who purchased on offerings that were dismissed because of the Second Circuit decision in IndyMac. So there are basically three buckets.

What the courts say in terms of plan of allocation is that they have to track the merits of the claims. So all that we did, in formulating the basic structure, is we followed the class rulings of the district court. So we gave the most money to the ten-day class; a much lesser amount to the people who bought pursuant to the offering but outside the ten days or not directly from the underwriter or their agents; and then the last bucket, the people who got the least amount, are the people whose claims were dismissed on statute of limitations grounds.

So the three-bucket structure is not that complicated, and it applies to the 235 million and it applies to the 100

million ResCap settlement. What gets complicated is determining the dollar amount of loss because, under Section 11, you take the difference between the price paid, the time of the offering, and the value at the commencement of the lawsuit. Because there were so many bonds involved in each offering, the expert had to, if there wasn't a trading price -- because bonds don't have publicly reported trading prices -- he had to find prices that were comparable, and that explains some of the complexity, at least, in the actual implementation of the plan of allocation.

But in terms of approving the plan of allocation, the issue the court needs to decide, at least the way that courts have said it, is whether it is a rational plan, whether it tracks the merits of the claims, and whether or not it was designed by counsel that are experienced and by their experts. I think we clearly meet those requirements here, and we were very careful to make sure that it was designed with the court's decisions in mind.

THE COURT: All right.

MR. LAITMAN: I don't know if that helps you.

THE COURT: It does. I still think it is complex. It doesn't mean I don't understand it, but I think it is a rather complicated one.

I am going to hear from Messrs. McGuinness and Fatale for a moment.

Gentlemen, I don't know if you have a horse in this race. I presume you have some views about the proposed settlement, I presume you think it is reasonable, but I would be happy to hear from you now.

MR. McGUINNESS: Your Honor, we have nothing to add.

THE COURT: You agree with everything that is stated in plaintiffs' papers regarding the plan?

MR. McGUINNESS: The plan of allocation is the plaintiffs'. We have little to say about it.

THE COURT: But with respect to the settlement itself, sir, and the Grinnell factors, you are fine with the way --

MR. McGUINNESS: We have no objections to the settlement.

THE COURT: Okay. Thank you very much.

MR. LAITMAN: Can I just add one point?

THE COURT: Of course.

MR. LAITMAN: As part of the settlement, Judge Weinstein reviewed the plan of allocation and he approved that as well, too.

THE COURT: I saw that. Thank you. I appreciate all the work he did over many months.

For me, sir, and this should come as perhaps not a shock, the toughest thing to get my head around is the attorney's fees, and not because I don't think you are deserving of them. It is because the amount -- maybe, in a

quiet moment, you might concede -- is substantial. I would like to understand a couple of things about that.

Particularly, there were, for lack of better term, comparators given to me -- the Massachusetts Bricklayers case, the City of Ann Arbor Employees Retirement System case and the In Re: Wells Fargo Mortgage-Backed Certificates case. I do see those, I see the percentages, and in some respects you are comparable and in some respects you are even lower than the percentage. But the settlement amount in those cases is substantially lower, and I do get the sense -- I understood this from the Goldberger court itself, that there is a suggestion about economies of scale the higher up you go.

I would like to understand from you why I should look at these as the comparators and why I should not be concerned about the size of the attorney's fees award.

MR. LAITMAN: Well, I think Judge Preska, when she wrote her fee decision in the Bristol-Meyers case, and I think Goldberger itself, when it talks about the factors, the most important factor is the risk at the time of the commencement of the lawsuit. What distinguishes this case from all of those other cases -- and, again, I think what Judge Preska says is it is the risk at the time of the commencement of the lawsuit. It is not today, when we have $335 million and it just seems like an enormous amount of money. It is the risk in 2008.

What distinguishes this case, first of all, is that in

2008, after we published notice which, as your Honor I am sure knows, usually leads to multiple, multiple law firms making their application for lead plaintiff, we showed up in court and no one else appeared. No one else appeared because, in 2008, there was a perception, rightly or wrongly, that this was too heavy a risk to take in terms of the scale, the likelihood of getting a class certified, the ability to represent more than a few of the purchasers on any given offering. And, frankly, we started the case in 2008. In 2011, that risk was proven true because the case was over. There was no class. The Second Circuit actually affirmed the denial of class certification, and I do think, without -- I am not someone who promotes himself or our firm per se --

THE COURT: Sir, now is the time to, so, yes.

MR. LAITMAN: -- but this is probably one of the only instances where a class was denied, the Second Circuit affirmed the denial of class, yet we are standing here three years later with $335 million.

I think, also compared to all of those cases, none of them had that history. None of them had the history of either no other firm wanting to take the case, which is an important factor in assessing the attorney's fees, and none of those cases had a denial of the class and a Second Circuit appeal, and then having to relitigate class certification again on an expedited basis and then prevailing. This was really

extraordinary circumstances, I think by any measure, in any context, much less the context of other comparable mortgage-backed securities cases.

Then I do believe that, frankly, this case in the merits went much, much farther than many of these other cases. Wells Fargo, I believe, didn't get anywhere near the close of expert discovery. Expert discovery in this case involved five experts, an enormous outlay of -- obviously the expenses are 3.9 million, the re-underwriting expert alone was $2 million, and much of the expenditure was made at the time when the scope of the case was expanding and contracting, and we didn't know really what the dimensions of the case were.

When you think about the compensation of the lawyers, and actually this public policy of wanting capable lawyers to take on the tough cases involving untried securities instruments, this is really the case, because all those other cases you cited are cases where people were competing to be in them. So there is a legitimate argument to be made that, yeah, well, if it wasn't our firm, somebody else would have achieved that result. That's not the situation here. The situation here is, had we not done it, these investors, these 4,000 claimants, would be getting zero.

THE COURT: Sir, you mentioned Judge Preska. Were you involved as well in the Harborview litigation?

MR. LAITMAN: Yes.

THE COURT: I read the transcript of the fairness hearing in Harborview and my sense is that already our transcript exceeds it in pages, but I did not -- there is a slight difference in the amount sought and the amount given. I think you may have sought something on the order of 19 percent, and she gave 17. I don't see a basis. Did she tell you why?

MR. LAITMAN: No.

THE COURT: Was it a surprise to you when you saw it.

MR. LAITMAN: Yes, it was.

THE COURT: Okay. Because I understood at the end, I thought I read her to say, I am approving this, that, the other thing, and then there was an order that was slightly different. If there was a basis that she shared with you or anyone else, I would be interested in hearing it, but I don't know if you know what that was.

MR. LAITMAN: No.

THE COURT: Anything else that you would like to tell me about the fees, sir?

MR. LAITMAN: No, I think I have covered it.

THE COURT: Mr. McGuinness, do you take no possession on that?

MR. McGUINNESS: We take no possession on it. We support the settlement but, again, in so doing, we are not endorsing any of the things that are asserted in it.

THE COURT: That I do understand. I appreciate that.

Thank you.

Mr. Laitman, I should have asked you, shall we talk about the certification of the class for settlement purposes? Tell me why I should if there is anything other than -- again, I have read the writings. If you want to stand on that, that's fine, sir.

MR. LAITMAN: Yes, I do. There is nothing new that needs to be added on that.

THE COURT: All right.

Anything else you want to tell me at all, sir, before I decide these issues.

MR. LAITMAN: The only thing that we have done is we have -- and we have shared with defense counsel a revised final judgment that adds in a paragraph on the plan of allocation.

THE COURT: Yes.

MR. LAITMAN: I can hand that up to you if you would like.

THE COURT: Yes, please.

Mr. McGuinness have you seen these changes?

MR. McGUINNESS: Yes, I was provided with a copy on the representation that it is as it was submitted in the draft papers, but for the inclusion of the paragraph on the plan of allocation as to which it's really a matter for the plaintiffs. On that representation, we don't object.

THE COURT: Thank you very much.

Let me then resolve the issues that we are here to resolve today. They include the settlement, the plan of allocation, the class, and the attorney's fees and costs.

As the parties know, the parties have been on this case much longer than I have been on this case. I have had it for about a year and a half, since Judge Baer's passing. What was striking to me in preparing for this proceeding and what's been striking to me since I have had the case is just what a long history this case has. I know there are class actions that have had longer histories, but an awful lot has happened in the last seven years, and so I just want to call a few points to mind as highlights.

After this case was first filed and in 2010, Judge Baer granted the defendants' motion to dismiss in part eliminating 55 offerings from the case based on a purported lack of standing and leaving only four of the RALI offerings to proceed. There were, thereafter, motions to intervene by institutional investors; and then, in 2011, the district court denied lead plaintiffs' motion for class certification in its entirety, and that led to an appeal. So I believe this case has had two full trips to the Second Circuit. Perhaps I am mistaken, but there has been a lot of work at the Second Circuit.

After receiving permission from the district court, lead plaintiff filed a renewed motion for class certification

based on an additional 750,000 pages of documents, four 30(b)(6) depositions, and a modified class definition. Here, the district court granted the motion for class certification, but then limited the class to initial purchasers only -- a class definition it expanded slightly upon the request of lead plaintiff to include those purchasers within the first ten trading days. That's something Mr. Laitman and I have been discussing.

Things got even more complicated in May of 2012, when Residential Accredited Loans, Inc., the "RALI" of which I spoke earlier, filed for bankruptcy protection. It required lead counsel to engage bankruptcy counsel and begin litigating in the bankruptcy proceeding. Ultimately, as a result of actively engaging in a mediation process involving former Bankruptcy Judge Peck, lead counsel secured $100 million in cash on the ResCap settlement for the benefit of the ResCap settlement class, and this was approved by Judge Baer on October 7, 2013, and by Judge Martin Glenn in the bankruptcy proceeding thereafter.

In November of 2012, some four years after the commencement of the action, lead counsel moved to expand the scope of the case based on then recent Second Circuit law pertaining to the issue of standings; and, as a result, in April of 2013, the case was expanded to include 16 RALI offerings. Then motions to certify these additional offerings

were filed and granted by the district court. With each of the certification rulings, the defendants filed Rule 23(f) petitions, which were opposed, and I believe were all denied by the Second Circuit.

In 2013 and 2014, there were fact and expert phases of discovery. Fact discovery included four million pages of documents, service of 215 nonparty subpoenas by lead counsel, 105 subpoenas by defendants, 15 fact depositions taken by lead counsel, and a number of litigated discovery issues before Judge Baer and Magistrate Judge Debra Freeman. There were eight expert reports served by lead plaintiff, including reports by a loan underwriting expert, who re-underwrote sample loan files; a statistician who opined on the methodology and validity of the loan sample; a damage expert; an expert on investment banking due diligence; and two experts on loss causation issues. The defendants served five expert reports, including reports on due diligence, re-underwriting, damages and loss causation.

At the time I received the case, I was gifted with -- I don't mean to be glib about it, they were actually fascinating motions that would have been interesting to resolve, but I am also happy not to resolve them -- summary judgment and Daubert motions with me; and at the same time, at least I recall the parties saying that they had at that moment been engaged in nine months of mediation with a retired judge

from the California Superior Court in San Francisco, Daniel Weinstein. After extensive mediation, this particular part of the case, the parties agreed in principal to a settlement of $235 million.

What is interesting to me is just the sheer scope of the case. It encompassed briefing and arguing, three separate motions to dismiss, briefing and arguing class certification three times before the district court, briefing four Rule 23(f) petitions to the Second Circuit, fully litigating an appeal before the Second Circuit regarding class certification, conducting discovery in connection with class certification following the Second Circuit ruling, briefing and arguing intervention motions, briefing and arguing a motion for reconsideration, briefing and arguing discovery motions before Magistrate Judge Freeman, completing the fact discovery that I have outlined a few moments ago, completing the expert discovery that I outlined a few moments ago, and then preparing the briefing in connection with the summary judgment and Daubert motions.

The total global settlement figure is $335 million because of the $100 million ResCap settlement I mentioned a few moments ago. Lead plaintiff has proposed a plan to allocate the proceeds of this global settlement among class members who submitted valid claim forms that are approved for payment from the net settlement fund. These folks would be the authorized

claimants in the case. What we have done -- and I have talked with plaintiffs' counsel, Mr. Laitman, about this -- is to discuss in broad strokes the contours of the plan allocation proposal which was formulated with the assistance of Dr. Michael Hartzmark, an expert with a Ph.D in economics. I won't outline it, because I think Mr. Laitman has done a fine job of doing that, but just explaining the different tranches, or buckets, of folks entitled to settlement proceeds and how possibly they will get that settlement.

I am advised that there are no objections filed. There has been a request for attorney's fees and litigation expenses, the former in the amount of $69,512,500 is and the latter in the amount of $3,922,092.49 in litigation expenses. I see, as well, there are no objections to the attorney's fees.

So on February 19 of this year, I granted preliminary settlement approval, finding that the settlement, at least to me, appeared fair, reasonable, and adequate, and we are here now for the final approval. In order to do that, I must undertake a fairness review, examining both procedural and substantive fairness. In conducting this review, I am mindful of the "strong judicial policy in favor of settlements, particularly in the class action context." The compromise of complex litigation is encouraged by the courts and favored by public policy. Here I am citing a Second Circuit decision from 2005, Wal-Mart Stores, Inc. v. Visa U.S.A., Inc. A proposed

settlement is presumed fair, reasonable, and adequate if it culminates from "arm's length negotiations between experienced, capable counsel, after meaningful discovery," and that is another Second Circuit decision from 2009, McReynolds v. Richards Cantave.

On the issue of procedural fairness, again, what I am asked to look at is the "negotiating process, to ensure that the settlement resulted from arm's length negotiations and that plaintiffs' counsel possessed the necessary experience and ability and engaged in the appropriate discovery necessary to effective representation of the class interests." A proposed settlement is substantively fair, speaking on the other side, if the nine factors outlined in the case of City of Detroit v. Grinnell Corporation weigh in favor of that conclusion. Grinnell is a 1974 decision from the Second Circuit and it is cited repeatedly in Second Circuit decisions, including in the Wal-Mart decision I mentioned earlier. Those factor are:

the complexity, expense, and likely duration of the litigation;

the reaction of the class to the settlement;

the stage of the proceedings and the amount of discovery completed;

the risks of establishing liability;

the risks of establishing damages;

the risks of maintaining the class action through the

trial;

the ability of the defendants to withstand a greater judgment,

the range of reasonableness of the settlement fund in light of the best possible recovery; and

the range of reasonableness of the settlement fund to a possible recovery in light of all of the attendant risks of litigation.

This, like all of these multifactor tests, focus on the totality of the circumstances; not all nine factors need to be satisfied.

Separately, I must ensure that the class notice meets the requirements for Rule 23 class actions in settlements. Under the Second Circuit law, the standard is measured by reasonableness. The settlement notice must fairly apprise the prospective members of the class of the terms of the proposed settlement and of the options that are open to them in connection with the proceedings. Notice is adequate if it may be understood by the average class member.

I have been asked, as well, to grant final certification for settlement purposes under Federal Rule of Civil Procedure 23.

So, focusing on the issue of procedural fairness, it is hard to dispute this factor. It was very much an arm's length negotiation between extremely experienced counsel

following rather exhaustive discovery of the type that I have outlined a few moments ago with the assistance of retired Judge Weinstein, who is a very experienced mediator, well known in this area, who oversaw the mediation and ultimately recommended that the $235 million amount to the parties. He has written a declaration that he submitted to me indicating that he finds the underwriter's settlement to be the reasonable result of a hard-fought, arm's length process and, further, that it represents a well-reasoned and fair resolution of this complex and highly uncertain litigation. I am permitted to consider his views in assessing fairness. In fact, judges in this district have frequently found that the use of an independent mediator strengthens the arguments for fairness and reinforces the notion that a settlement is non-collusive. So I do find, based on all of the information that's been presented to me, that the settlement is procedurally fair.

There is, then, the issue of substantive fairness, and I take Mr. Laitman's point. It is easy now to look at that settlement figure and think that everyone knew this was a foretold conclusion in 2008, but there was actually none of that. As he tells me, there is no precedent for this type of litigation. They lost as often as they won on issues such as standing, certification, things of that nature, and there were extremely complicated issues that began with standing, persisted through certification, and actually persisted all the

way through discovery in this case.

So just with respect to the Grinnell factors that I think are most implicated:

First, the high litigation cost. Yes, litigation was costly and complex. I can tell that by the things that have been submitted to me thus far. And additional litigation on the issue of summary judgment, the Daubert motions, and what I suspect would be an additional appeal, at least one, to the Second Circuit counsel in favor of settlement.

The stage of the proceedings. This is six years, almost seven years, after litigating really significant issues before two district judges and the Second Circuit and after an extraordinary amount of discovery had taken place.

The uncertainty of success, I think, has been spelled out in these discussions and in the written papers.

There is a highly favorable class reaction. We have 11 requests for exclusion, of which eight have been submitted by purchasers who have filed individual actions against the underwriter defendants long before the underwriter settlement was achieved, and I presume those are intended to preserve those existing actions, and there are no objectors.

I also believe that this is well within the range of reasonableness in light of the risks of litigation. There were potentially substantial damages that could be recoverable, but there were also very thoughtful arguments by the defendants

regarding liability and regarding actual losses that could have greatly reduced or eliminated altogether those damages.

So I agree with plaintiffs' arguments regarding the Grinnell factors, and I find them to be persuasive. It is, again, noteworthy to me that there are no objections. So, for all of these reasons, I will be granting final approval to the class settlement.

There is next the issue of the plan of allocation. It has been argued to me by plaintiffs that the plan satisfies the objective of equitably distributing the global settlement proceeds to those class members who suffered economic losses as a result of the alleged misrepresentations and omissions. So here, too, the plan must be scrutinized and it must be found to be fair and adequate. At this point I am to look primarily to the opinions of counsel, and the issue of the advocacy of the allocation plan turns on whether counsel has properly apprised itself of the merits of all claims and whether the proposed apportionment is fair and reasonable in light of that information.

I understand, from both the written submissions and from my later discussions with Mr. Laitman, that there are three different groups with allocations made based on the relative strength of each group's claims. The reasons for grouping the class members in this manner is explained in detail in the plaintiffs' papers, and it appropriately reflects

Judge Baer's and the Second Circuit's limitations on certain class members' abilities to recover in this case.

I also do note -- and it was reminded to me by plaintiffs' counsel -- that Judge Weinstein found the plan of allocation to be fair and reasonable, and it was nearly identical to the plan that was submitted to and approved by Chief Judge Preska in, perhaps one can call it parallel, the Harborview case which settled for $275 million, and I believe the fairness hearing was in November of last year. I note as well that there are no objections to the plan of allocation; and, therefore, I deem it to be fair, reasonable, and adequate to the class as a whole.

On the issue of notice, the question is whether that satisfied the requirements of Rule 23(c)(2)(B). It included a mailing to all class members who could be identified with reasonable effort. It was published in summary fashion in the Wall Street Journal and on PR Newswire, and there is a posting of the notice and claim form on Web sites maintained by lead counsel and by the claims administrator. I believe, as well as the parties have argued to me, that the notice here was the best notice practicable under the circumstances, and I think that counsels in favor of approving the settlement's fairness.

Let me speak, then, about class certification. I know the parties know this, but there are folks in the room who may not. Class certification has the requirements of numerosity,

commonality, typicality, and adequacy of representation under Rule 23(a) and at least one subsection of Rule 23(b).

Plaintiffs meet the numerosity requirement because there are more than 4,200 proof of claims forms filed. If numerosity is presumed at 40 members, we are far in excess of that.

The commonality issue is met if plaintiffs' grievances share a common question of law or fact, and as but one cite for that proposition, I cite Central States Southeast and Southwest Areas Health and Welfare Fund v. Merck-Medco Managed Care, LLC, a Second Circuit decision from 2007. "Typicality," by contrast, "requires that the claims of the class representative be typical of those of the class, and it is satisfied when each claim member's claim arises from the same course of events and each class member makes similar legal arguments to prove the defendants' liability," also cited in the same case. As the Supreme Court has observed, the commonality requirement "tends to merge" with typicality because "both serve as guideposts for determining whether the named plaintiff's claim and the class claims are so interrelated that the interests of the class members will be fairly and adequately protected in their absence." That is the case of General Telephone Company of Southwest v. Falcon, a 1982 decision of the Supreme Court.

I have already found commonality and typicality in granting preliminary certification of the class in February. I

am not backing away from that finding now, so I continue to find those requirements met.

Rule 23(a)(4) requires that the representative parties will fairly and adequately protect the interests of the class, and to meet that requirement the named plaintiffs must have an "interest in vigorously pursuing the claims of the class and have no interests antagonistic to the interests of other class members," and that is a Second Circuit decision from 2006, Denney v. Deutsche Bank A.G. I have no evidence that the named plaintiffs have any interests antagonistic to the interests of the class, and I also find that class counsel meets the adequacy requirement.

That leaves me with Rule 23(b)(3), and that is that common questions of law or fact "predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Having met the requirements of 23(a), the plaintiffs have gone a long way towards meeting the requirements of 23(b)(3). I find that common questions predominate, since they allege common facts and a common legal theory; and I also find that a class action is the superior mechanism for resolving these complex securities claims.

So we are now at the stage with attorney's fees and reimbursement of expenses. What is requested is an order awarding lead counsel 20.75 percent of the global settlement,

or $69,512,500, and $3,922,092.49 in litigation expenses.

Let me pause for a moment here. I have watched a lot of judges deal with attorney's fees issues, and I have seen them do haircuts of anywhere from 2 percent to 10 percent to 15 percent and somehow justify that as something that's appropriate. They somehow console themselves or make themselves feel as though the issue is correct if they take some small haircut.

I have spent the past week trying to find and to test in an intellectually honest way whether anything should be taken from the fee amount that is sought. That is why I asked about what Judge Preska did. That's why I have been pressing Mr. Laitman about issues.

The fact remains that I have no intellectually honest way of doing it. I can do it because you probably wouldn't appeal me if I cut 1 percent or 2 percent off of the fee award, but I am not going to do that, because everything that I have looked at counsels in favor of this award. It is a large amount, it is large to read it, but that doesn't mean it is an inappropriate amount. Because when I look at the Goldberger factors -- and that's what I need to look at here -- I have to look at the time and labor expended by counsel, the magnitude and complexities of the litigation, the risk of the litigation, the quality of the representation, the requested fee in relation to the settlement, and public policy considerations.

I know that I could either do a lodestar method or a percentage method, but I know the trend in this circuit is for the percentage method, and that works better in this situation.

Just going through the factors, plaintiffs' counsel has dedicated 84,500 hours and expended $4 million in expenses in prosecuting this case. The discovery that I outlined a few moments ago is enough to show that a tremendous amount of time and labor was expended by counsel.

On the issue of the magnitude and complexities of the litigation, yes, for all of the reasons set forth in plaintiffs' papers, for all of the reasons set forth or at least indicated by the procedural history I described at the beginning of this process and for the reasons discussed by Mr. Laitman early on in our discussions today, factor three, the risk of litigation has been suggested to me that that is the most important factor. I think it is the most striking factor here, that in 2008 no one else seemed to want to take this particular tack with litigation, and in 2011 they seemed to be proven correct, but here we are with a rather substantial settlement. I don't want to demean this by saying that fortune favors the brave, but that is what happened here. Plaintiffs' counsel took on an enormous amount of risk and stuck with it for nearly seven years. So I think that very much influences my decision to award the fees sought.

I have no qualms with the quality of the

representation based on the materials that I have seen and the materials that I have seen submitted to Judge Baer. The requested fee in relation to the settlement, I don't think 20.75 percent is unreasonable. I understand that Judge Preska awarded less. I don't know why she awarded less. She is allowed to do that. I have thought about reasons why I should award less, and I can't come up with any that satisfy my own desire for intellectual honesty, so I am not going to here.

Therefore, I am left with public policy considerations. This was a novel case on behalf of a class that no one else seemed to want to pursue, and therefore public policy favors granting the request for fees. So, therefore, I will in fact award the fees sought. Just to get that number again, $69,512,500.

Separately, I am being asked to compensate counsel for the expenses that have been incurred, $3,922,092.49. I have seen in Mr. Laitman's declaration the cataloging of these expenses. I find the amounts to be reasonable, and I will therefore approve them in the full amount requested.

So let me then go back to the beginning and make sure that I have not overlooked anything. We have talked about the settlement, we have talked about the plan of allocation, we have talked about the notice. I have certified the class. I have talked about the attorney's fees and expenses.

Mr. Laitman, is there anything I have forgotten to do

this afternoon?

MR. LAITMAN: No, your Honor.

THE COURT: Can I understand, sir, that you will get a transcript of this so that anyone who is not here today can get a copy of it?

MR. LAITMAN: Yes, your Honor.

THE COURT: Mr. McGuinness, is there anything I have forgotten to do today, sir?

MR. McGUINNESS: No, your Honor.

THE COURT: Well, I thank you for spending your Friday afternoon with me. We could stay and talk if you want to, but I think I will let you go. Thank you very much.

I have orders. I have glanced at the newest order when it was handed to me. I will read it very carefully, and I anticipate signing it this afternoon.

Thank you very much.

MR. LAITMAN: Thank you, your Honor.

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