

IN THE CIRCUIT COURT OF THE 6TH JUDICIAL CIRCUIT,
IN AND FOR PINELLAS COUNTY, FLORIDA

CASE NO.: 05-7822-CI-11

ALFRED L. WILLIAMS, II, on behalf of
himself and all others similarly situated,

Plaintiffs,

vs.

HERITAGE OPERATING, L.P., d/b/a
HERITAGE PROPANE, a Delaware
Limited Partnership, as successor in
interest to PEOPLES GAS; and
AMERIGAS PROPANE, L.P., a
Delaware Limited Partnership,

Defendants.

_____/

**ORDER REGARDING DISTRIBUTION OF ATTORNEY'S FEES
AND COSTS TO CLASS COUNSEL FROM THE COMMON FUND**

This matter came before the Court on the Petition for Distribution of Attorney's Fees and Costs to Class Counsel from the Common Fund, filed on April 24, 2017, along with the attorneys' fees, costs ledgers of Class Counsel and the time records of the Class Representative, Mr. Williams. The Court has also considered the detailed expert witness reports of Ceci Berman, Esq. and Joseph H. Saunders, Esq. The Court conducted a hearing on this Motion on April 26, 2017, when the Court considered further discussion. The Court has also overseen these proceedings, including presiding over a liability trial, two (2) damages trials as well as extensive motion practice and is otherwise fully advised in the premises. Accordingly, the Court hereby finds and orders as follows:

THE COURT'S CONSIDERATIONS

In addition to the fact that this Court has presided over this hotly contested matter since 2010, the Court has considered:

- (1) The record herein, this Court's observations of this litigation and the issues therein, and the vigorous and skillful manner in which both sides litigated this case;
- (2) The Petition itself, along with the attachments thereto;
- (3) Evidence submitted with the Petition, including the sworn submissions and extremely detailed time records of each Class Counsel Legal Team member, which includes the itemized expense records incurred by the Class Counsel Legal Team in connection with this action and the time records of Class Representative, Alfred L. Williams, II; and,
- (4) The Expert Reports of Ceci Berman, Esq. and Joseph H. Saunders, Esq.

SUMMARY OF CASE RESULT AND INSTANT PETITION

This matter has led to a rare and exceptional result for the Class. The actual losses of the Class members, until November 2008, amounted to \$9,834,451.00. However, the ultimate recovery, with the addition of pre-judgment and post-judgment interest, taxable costs, as well as the resolution of the sanctions issues, resulted in a total recovery for the Class of \$21,271,056.63. Equally important, the damages are being distributed to the 65,124 Florida Class members without any requirement for them to submit to any type of claim process whatsoever; they simply have to receive their mail and deposit the check. Indeed, even after the deduction of the attorneys' fees, expenses, Class Plaintiff's award, and the cost of the distribution, the end result is that each Class member will still be receiving a minimum of 100% of their out of pocket losses.

In short, Plaintiff's Counsel submits a cumulative lodestar fee of \$4,167,391.31, which fee, with a lodestar multiplier of 2.3, results in a final attorneys' fee of \$9,585,000.00. For the reasons that follow, this Court Rules that this fee request is reasonable and merited under all the circumstances.

LODESTAR CALCULATION

As noted above, Plaintiff's Counsel submits a cumulative lodestar of \$4,167,391.31.

In that regard, this Court finds the expert reports of Ceci Berman, Esq. and Joseph H. Saunders, Esq. to be very detailed and credible. Further, the Court finds that Plaintiffs' Counsel's billing rates are certainly consistent with Florida rates for complex, class action litigation.

Plaintiffs' Counsel have also met their burden of showing that there was no unreasonable duplication. See *Johnson v. Univ. Coli. Of Univ. of Ala. in Birmingham*, 706 F.2d 1205, 1208 (11th Cir. 1983), holding as follows:

The retaining of multiple attorneys in a significant, lengthy employment discrimination case such as this one is understandable and not a ground for reducing the hours claimed. The use in involved litigation of a team of attorneys who divide up the work is common today for both plaintiff and defense work. . . . A reduction is warranted only if the attorneys are *unreasonably* doing the *same* work.

In fact, to be conservative and to benefit the Class further, Plaintiff's Counsel voluntarily reduced their lodestar by more than \$300,000.00, despite this Court's finding that there was no unreasonable duplication. Accordingly, the Court finds that the cumulative lodestar of \$4,167,391.31, as submitted, is materially fair and certainly reasonable.

MULTIPLIER ANALYSIS

The maximum lodestar multiplier in a common fund case is five times (5x). See *Kuhnlein v. Dept. of Revenue*, 662 So.2d 309 (Fla. 1995). In determining the multiplier, *Kuhnlein*, in turn, calls for application of the principles enunciated in *Fla. Patients' Camp. Fund v. Rowe*, 472 So.2d 1145, 1151 (Fla. 1985) and *Standard Guar. Ins. Co. v. Quanstrom*, 555 So.2d 828 (Fla. 1990).

Rowe and *Quanstrom*, *supra*, make clear that in exercising its discretion when setting a lodestar multiplier, the trial court must consider the likelihood of success at the outset of the litigation. Both *Rowe* and *Quanstrom* also make clear that where the chance of success at the outset of the litigation is less than 50-50, a multiplier at or near the maximum is indicated. Thus, to a very large extent, "the amount of the multiplier . . . depends on the likelihood of success at the outset of the case." See also *Dreidame v. VIII. Ctr. Cmty. Devel. Dist.*, 2008 WL 7079074 (Fla. Cir. Ct., 5th Cir., 2008) (citing and quoting *Ramos v. Phillip Morris Cos.*, 743 So.2d 24, 33, and holding "based on the risk factor alone, the multiplier would have to be five.").

Here, the likelihood of success at the outset was less than 50 – 50 as demonstrated by the fact that the initial trial judge granted summary judgment based on contract principles, and the Class Plaintiff had to appeal that ruling and establish precedent in a published opinion in order to proceed with Class certification and ultimately prevail on the merits of the case. Additionally, there was extensive motion practice regarding Class certification and, then, merits discovery, which was extremely complex and created difficult obstacles to Plaintiff's likelihood of success. Indeed, Plaintiff's, ultimate, result of success resulted from Plaintiff's risky, but prevailing argument that the burden of proof should shift to Defendants regarding Class member's ability to recover damages due to Defendants' recordkeeping problems for its electronic and hard paper files. The likelihood of this type of result, at the outset, was low.

Finally, Plaintiff has submitted substantial evidence that the recovery in this matter, resulting in no less than 100% of total damages to each Class member, without any requirement for each respective Class member to submit any claims forms in order to recover, is extremely rare. See "Do Class Actions Benefit Class Members", Mayer Brown LLP, a survey commissioned by the US Chamber of Commerce. The Court is also unaware of any similar recovery in Florida. Consequently, the ultimate success of this litigation is certainly well above the norm, notwithstanding the unlikelihood of this result at the outset as discussed *supra*.

APPLICATION OF THE ROWE FACTORS

This Court now applies the various factors set forth in *Fla. Patients' Compensation Fund v. Rowe*, 472 So.2d 1145, 1151 (Fla. 1985), guided by Florida Rule of Professional Conduct 4:1-5, for determining the reasonableness of an attorneys' fees:

(1) This suit lasted 12 years, was complex, hotly contested, included an improvident removal to Federal Court, involved extensive motion practice and briefing, multiple lengthy hearings, nine (9) separate appellate proceedings and three (3) trials. Among other lengthy and complex issues, a substantial amount of the litigation dealt with the Defendant's records and record keeping as well as the use of Defendant's databases and evidentiary disputes that ultimately led to the Court shifting the burden of proof to the Defendant. The prosecution and defense of these claims required great skill, and all counsel performed with considerable skill. Attorneys for both sides were up against excellent lawyers.

(2) The prosecution of this suit by some of the Plaintiff's Counsel herein precluded other employment. This is necessarily true generally among the most active firms herein that could have been working on other matters. Indeed, Lead Counsel's firm submitted a detailed lodestar showing that its members spent more than 4,000 hours prosecuting this suit.

(3) The amount of the recovery, and the fact that it will be distributed without any need for the Class members to submit to any claims process, is most unusual and Plaintiffs' Counsel asserts that, as a result, the outcome of the case is truly extraordinary. This Court agrees.

(4) At various points in this twelve-year litigation, there was enormous time pressure. For instance, at the suggestion of the Defense, and ultimately pursuant to this Court's Order, the small and short-staffed Class counsel firms were required to travel the State of Florida visiting district offices of the Defendant and then to review and analyze hundreds of thousands of electronically imaged customer files in order to be prepared to try the damages portion of this

case. This necessitated the addition of temporary and part-time staff in a virtually round the clock effort. And, while that was ongoing, the Defense continued to cause numerous motions and hearings in this matter, sometimes renewing old motions that had already been ruled upon or moving for rehearing(s) of motions already adjudicated, which all had to be timely addressed and dealt with contemporaneously with the file-by-file review of Defendant's imaged records.

(5) Mr. Williams, the Class representative, is a consulting actuary, and he was extensively involved throughout this litigation. He has a strong interest in this suit, and he played an active role throughout the twelve (12) years the case was litigated.

(6) This Court finds that Plaintiffs' Counsel are highly experienced in complex civil and class action litigation.

(7) Plaintiff's Counsel took this matter on an entirely contingent basis. Thus, they were at risk for all money spent to prosecute this case and time expended.

Having fully considered the aforementioned *Rowe* factors, this Court finds that Class Plaintiff's Counsel's submitted lodestar of attorneys' fees is certainly reasonable.

EXPENSE REIMBURSEMENT

As to reimbursement of expenses, the Court finds that, considering the length, complexity and contentious nature of this litigation, the expenses incurred by Class counsel, including for the Class notice, efforts to visit the Defendant's district offices and time spent reviewing millions of pages of electronic documents, Class Counsel's submitted expenses are moderate and appropriate.

REIMBURSEMENT OF CLASS REPRESENTATIVE

As to the service award for Mr. Williams, he is a consulting actuary, was deposed several times in this action, he testified in court at both the Class certification hearing and the liability trial and he attended several lengthy hearings. The Court is also aware that after the first appeal, but before the Class certification hearing, the Defendant terminated its delivery

relationship with Mr. Williams, in an unsuccessful attempt to remove his standing to represent the Class. Nevertheless, as a result, he was forced to purchase his own tank from a competitor and withstand unusual interference with his daily and home life due to this case. Accordingly, the Court finds that Mr. Williams should be reimbursed for the time and effort he expended at his professional hourly rate.

NOW THEREFORE, the Court finds that Plaintiff's Petition for Distribution of Attorney's Fees and Costs to Class Counsel from the Common Fund, including a service award for the Class representative, Mr. Williams, is GRANTED to the extent that:

- (a) Plaintiffs' Counsel are awarded fees of \$9,585,000.00 to be paid out of the Common Fund;
- (b) Plaintiffs' Counsel are awarded cost reimbursement of \$288,894.64; and,
- (c) Class Representative Alfred L. Williams II, is awarded \$54,525.00.

DONE AND ORDERED in Chambers in St. Petersburg, Pinellas County Florida this ____ day of May, 2017.

ORIGINAL SIGNED
May 10, 2017
Pamela A.M. Campbell, Circuit Judge
6th Judicial Circuit
Pinellas County, Florida
Case No. 05 007822 CI 11

HON. PAMELA CAMPBELL,
CIRCUIT JUDGE

cc: Jeffrey M. Liggio, Esq. and Geoff S. Stahl, Esq., 1615 Forum Place, Suite 3B, West Palm Beach, FL 33401;
Scott T. Johni, Esq. 105 South Edison Avenue, Tampa, FL 33606;
Kent G. Whittemore, Esq. City Center, Suite 304 S 100 Second Avenue South St. Petersburg, FL 33701;
Hala Sandridge, Esq., P.O. Box 1438, Tampa, FL 33601