

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

WAYSIDE CHURCH, <i>et al.</i> ,	)	
Plaintiffs,	)	
	)	No. 1:14-cv-1274
v.	)	
	)	Honorable Paul L. Maloney
VAN BUREN COUNTY, <i>et al.</i> ,	)	
Defendants.	)	
_____	)	

**ORDER REGARDING FEES**

Plaintiffs moved for attorney fees following the settlement in this case. (ECF No. 401). Objectors to the settlement filed a response in opposition. (ECF No. 428). The court will grant the motion.

**I. Background**

This case had been pending for nearly a decade before settlement. It includes a long procedural history, developments in the law, and a host of collateral issues. The complexity of this matter cannot be understated. Along the way, class counsel faced staunch resistance from defense counsel and other attorneys, including objecting counsel. The parties achieved settlement only after months of negotiations with the Sixth Circuit Mediation Office.

Class counsel settled this matter, and each claimant with a valid claim will receive up to 80% of the surplus proceeds retained by the Defendant counties following the foreclosure and sale of the claimants' former properties. The settlement provided that class counsel may apply for an award of attorney fees up to 20% of the amount paid to each claimant, which

will be deducted from each class member's distribution. For example, for every \$100 of surplus funds, \$80 will return to the class. Under the proposed fee model, 20% of that \$80 will go to class counsel, or \$16, which leaves each claimant with approximately \$64 for every \$100 of surplus funds. Objectors lodged a series of objections. The court will grant class counsel's motion for fees because class counsel provided prompt and fair relief for the class.

## II. Legal Standard

Courts "must make sure that counsel is fairly compensated for the amount of work done as well as for the results achieved." *Rawlings v. Prudential-Bache Properties, Inc.*, 9 F.3d 513, 516 (6th Cir. 1993). "[T]he the percentage of the fund method more accurately reflects the results achieved." *Id.* Fee awards are within the discretion of the court, but it is important that the court "provide a concise but clear explanation of its reasons for the fee award." *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983). At the same time, "a request for attorney's fees should not result in a second major litigation." *Id.* "One of the primary determinants of the quality of work performed is the result obtained." *Rawlings*, 9 F.3d at 517. Courts in this circuit weigh six factors to determine whether fees are reasonable:

(1) the value of the benefit rendered to the plaintiff class; (2) the value of the services on an hourly basis; (3) whether the services were undertaken on a contingent fee basis; (4) society's stake in rewarding attorneys who produce such benefits in order to maintain an incentive to others; (5) the complexity of the litigation; and (6) the professional skill and standing of counsel involved on both sides.

*Bowling v. Pfizer, Inc.*, 102 F.3d 777, 780 (6th Cir. 1996).

### III. Analysis and Approval

Class counsel requests 20% of the surplus proceeds recouped by the settlement.<sup>1</sup> The court finds that class counsel's fee award request is fair to the class and well-deserved. The fees represent reasonable compensation for the significant amount of work performed by class counsel and value secured for the class.

First, the 20% fee sought by class counsel is well within the typical 20%-30% range of attorney fees typically awarded for class action settlements. *Fournier v. PFS Invs., Inc.*, 997 F. Supp. 828, 832 (E.D. Mich. 1998) (citing *Paul, Johnson, Alston & Hunt v. Grauly*, 886 F.2d 268, 272 (9th Cir. 1989); *Manners v. Am. Gen. Life Ins. Co.*, No. CIV.A. 3-98-0266, 1999 WL 33581944, at \*29 (M.D. Tenn. Aug. 11, 1999) (collecting cases); *In re Cardizem CD Antitrust Litig.*, 218 F.R.D. 508, 532 (E.D. Mich. 2003) (collecting cases). In fact, class counsel's fee request it is at the low end of the typical range, which benefits the class. The modest fee request strikes the court as objectively reasonable.

Second, class counsel's fee award is directly tied to the relief earned for the class. To the extent that class counsel received a fee, so must all members of the class who made a claim. This fee style ensured that class counsel's interests aligned with the interests of the class. *See Pearson v. NBTY, Inc.*, 772 F.3d 778, 781 (7th Cir. 2014). Class counsel's pecuniary interests motivated them to secure a high claims rate and strong notice rate, and they did.

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<sup>1</sup> "The Plaintiffs' Counsel intend to apply for a fee award equal to 20% of the amount to be paid by Court order to each Eligible Claimant, which amount shall be deducted from each Class Member's distribution. The Counties will not object to that application." (ECF No. 220-2 at PID 3628).

Third, the value retained by the settlement for the class was substantial. As concluded previously, the court finds that the 80% figure less attorney's fee is more than adequate. When coupled with a high claims rate exceeding 50%, the settlement returns a great deal of the surplus funds to the claimants. Finally, the fee was negotiated with the settlement, under supervision of the Sixth Circuit Mediation Office.<sup>2</sup> The bulk of evidence suggests that the fee request is fair.

A. *Bowling* Factors

A review of the *Bowling* factors also points to the fairness of the fee request. The value achieved for the class was substantial. As discussed at length in this court's opinion approving the settlement, the 80% settlement figure is substantial in general, and even more so considering the considerable risk of trial and continued litigation. The settling parties pointed to a series of open ended and unanswered legal questions regarding the future of class member's claims. (ECF No. 544 at PID 12846, 12852).

The value of the service on an hourly basis also indicates that the fee award is fair. Although the 20% figure is objectively reasonable, the court will engage in a lodestar calculation. The court will consider the number of hours worked by class counsel and multiply that figure by class counsels' hourly rates. Per class counsel's exhibits attached to their fee motion, the following hourly rates were used:

- Partners with at least ten years experience: \$750/hour
- Associates: \$395/hour

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<sup>2</sup> A more detailed discussion of the settlement's adequacy is available in the court's order approving the settlement. (ECF No. 544). This opinion should be read in concert with the court's prior approval order.

- Legal Assistants: \$175/hour
- Law Clerks: \$125/hour
- Students/Clerical Assistants: \$ 75/hour

Using these rates, class counsel's fees as of September 26, 2023 amounted to \$6,855,321.25 (ECF Nos. 401-1, 401-2, 401-3). At the time class counsel made their fee request, the total value of the claims made was not yet calculated. The settlement administrator, however, was able to determine a range of possible figures. When class counsel sought their fees, they anticipated that the entire pool of surplus funds would be between \$25 million and \$41 million. 20% of those figures amount to \$5,000,000 at the low end and \$8,200,000 at the high end. Therefore, the September 2023 fee calculation of \$6,855,321.25 falls well within the \$5,000,000 to \$8,200,000 fee range when considering the lodestar method.

At the time the court approved the settlement, and after class counsel had moved for their fees, the court had received additional claim figures from the settlement administrator. "After removing Claims received on any Eligible Property that had also received a request for exclusion, the maximum potential Surplus Proceeds for all known Claims would be \$39,135,422.31." (ECF No. 517 at PID 11887). 20% of \$39,135,422.31 is \$7,827,0834.46, which is the maximum that can be awarded under the current fee request.

To calculate the current lodestar multiplier, the court takes \$7,827,0834.46 and divides it by the fees accrued as calculated under the lodestar method, \$6,855,321.25. Based on these figures, the lodestar multiplier is 1.14, which is well within the typical range approved within this circuit. *See, e.g., Barnes v. City of Cincinnati*, 401 F.3d 729, 746 n. 4

(6th Cir. 2005) (explaining that a 1.75 lodestar multiplier is “near the upper end of what we consider ‘reasonable.’”); *Lonardo v. Travelers Indem. Co.*, 706 F. Supp. 2d 766, 796 (N.D. Ohio 2010) (approving a multiplier of 1.3); *New York State Teachers Retirement Sys. v. Gen. Motors Corp.*, 315 F.R.D. 226, 244 (E.D. Mich. 2016) (approving a multiplier of 1.9); *Kogan v. AIMCO Fox Chase, L.P.*, 193 F.R.D. 496, 503-04 (E.D. Mich. 2000) (approving a 2.49 multiplier); *Lowther v. AK Steel Corp.*, Case No. 1:11-cv-877, 2012 WL 6676131, at \*5 (S.D. Ohio Dec. 21, 2012) (finding a multiplier of 3.06 acceptable); *In re Cardinal Health Inc. Sec. Litig.*, 528 F. Supp. 2d 752, 767-68 (S.D. Ohio Dec. 31, 2007) (approving a multiplier of “approximately 5.9”). The lodestar analysis indicates that the fee request is reasonable compared to the hours worked.

The contingent nature of the fee favors settlement. As discussed, class counsel was only awarded to the extent that the class members recouped their surplus proceeds. Class counsel risked their time and funds for nearly a decade and weathered several appeals. Likewise, society benefits from fee awards that vindicate constitutional rights.

The complexity of this litigation also supports the reasonableness of the fee request. Even objecting counsel agreed that this matter and those like it are complex, risky, and costly. (ECF No. 446 at PID 8896). This matter is best suited for settlement.

The professional skill and standing of counsel also favor the fee request. As discussed at length in the court’s opinion regarding the settlement’s fairness, class counsel was adequate. While some allegations merited pause, namely those regarding the employment of a special investigator, the court found no prejudice to the class. To the contrary, the relief

provided to the class was solid, the notice rate was high, and class members filed their claims in droves—producing a very high claims rate exceeding 50%. (*See generally*, ECF No. 544). It's also worth mentioning that counsel for the counties are experienced and well-respected litigators.

## B. Objections

Objectors protest the fee award because (1) they believe the claims rate is illusory; (2) conflicts preclude a fee award; (3) the fee improperly burdens the class; and (4) the request for the fee was filed after the deadline for objections.

The claims rate is not illusory. Objectors argue that the information provided to the court was insufficient to establish the claims rate. This objection lacks merit. In fairness to objectors, however, the settlement administrator had not yet provided updates on the claims figure before their response to the motion for fees was filed. (ECF No. 517). The subsequent declaration from the settlement administrator included information about the number of lienholder claims, the total value of the relevant parcels, as well as updated claims rate figures. (*Id.*).

Including the lienholders in the class did not render class counsel inadequate. (*See generally*, ECF No. 544). The sole legal authority cited by objectors is a Second Circuit case from 1950. In *Silbiger v. Prudence Bonds Corp.*, 180 F.2d 917 (2d Cir. 1950), an attorney represented competing interests in a series of proceedings, and the court held that the attorney violated his duty to some of his clients. *Id.* at 919. Here, we had one proceeding.

Class counsel had a singular allegiance to the class and they endeavored to retrieve as much of the class's surplus proceeds as possible.

Objectors argue that the counties should be paying the fees and not the class. Parties that prevail on their § 1983 claims can recoup their fees. 42 U.S.C. §1988(b). This is a possibility, and presumably one that was bargained over during the extensive mediation in this case. Objectors argue that the claims are strong and there was no need to settle, but the settling parties provided several outstanding legal questions that encouraged settlement:

- Whether *Rafaeli* will be applied retroactively and to whom.
- What the appropriate statute of limitations is for unnamed putative class members.
- Whether the Michigan Legislature's post-*Rafaeli* amendments to the foreclosure-and sale process bar class claims.
- How surplus proceeds are to be distributed among competing claimants where more than one person held an interest in a property.
- How other equitable defenses including unclean hands, unjust enrichment, and laches apply to each class member's claims.

An award of fees would require that the class prevail on the merits of their claims, which is simply not guaranteed. At any rate, it is not uncommon for attorneys to seek a fee from the sum of a settlement.

Finally, objectors argue that class counsel's failure to comply with the *Mercury* Rule is fatal. The *Mercury* rule requires that the fee application be filed before the objection deadline. *See e.g., Redman v. Radioshack Corp.*, 768 F.3d 622, 637-38 (7th Cir 2014). As discussed in this court's order approving the settlement, class counsel complied with Rule 23(h), and objectors were obviously able to contest the fee award. Even if this was an error, it was harmless.



#### IV. Conclusion

The court concludes that the class counsel received a strong settlement for the class. Class counsel was adequate, and the fee request is appropriate under the circumstances in this case. Class counsel's fees are approved.

**IT IS HEREBY ORDERED** that Plaintiffs' motion for fees (ECF No. 401) is **GRANTED**.

**IT IS SO ORDERED.**

**IT IS SO ORDERED.**

Date: July 12, 2024

/s/ Paul L. Maloney  
Paul L. Maloney  
United States District Judge