

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

MATTIE HALLEY and LETICIA
MALAVÉ, On Behalf of Themselves and All
Others Similarly Situated,

Plaintiffs,

-against-

PPG INDUSTRIES, INC.,

Defendants.

Civil Action No. 2:10-cv-3345
(ES)(JAD)

Document electronically filed.

**MEMORANDUM IN SUPPORT OF CLASS COUNSEL'S MOTION SEEKING AN AWARD
OF REASONABLE COSTS, ATTORNEYS' FEES, AND INCENTIVE AWARDS IN
CONNECTION WITH THE PPG SETTLEMENT**

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I. INTRODUCTORY NOTE

On May 10, 2016, this Court issued its Order and Final Judgment approving class-action settlement of all Class A and C claims against defendant Honeywell International, Inc. (the “Honeywell Settlement”) D.E. 442. Attorneys’ fees and costs in connection with the Honeywell Settlement were subsequently granted pursuant to the Third Circuit’s holding in *Halley v. Honeywell Int’l, Inc.*, 861 F.3d 481, 501 (3d Cir. 2017) (hereafter “*Halley*”) and Professor Eric D. Green’s May 29, 2018 Memorandum and Report and Recommendation (D.E. 476) (hereafter “R&R”), as adopted (D.E. 477).

Class Counsel’s instant Motion Seeking an Award of Reasonable Costs, Attorneys’ Fees and Incentive Awards adheres to the above precedent, including the re-distribution of costs requirement to Class A and C properties. D.E. 477 (“if the pending class action against Defendant PPG Industries, Inc, is resolved * * * a pro rata allocation shall be made in the form of a reimbursement to the Honeywell Class.”). For the sake of brevity and the avoidance of duplicative filings, this Memorandum refers to those holdings and prior Docket Entries, where possible.

II. INTRODUCTION

After ten years of litigation, Class Counsel have secured a meaningful settlement on behalf of owners of Class 2 residential property located in Class Area B, resolving all remaining claims against the sole remaining defendant, PPG Industries, Inc. (“PPG”) This settlement fully resolves this hard-fought — and decade-old — litigation.

The settlement provides cash payments from a common fund to the owners of 1-4 family residential properties in Class Area B who allege that PPG’s generation, disposal, and failure to properly remediate chromate waste interfered with their use and enjoyment of property, and caused a diminution in the value of their properties. D.E. 489-2. The settlement proceeds seamlessly with PPG’s prior obligations to remediate the chromium waste sites in, and around, their former chromate

plant in Disposal Area B. *Id.* The settlement does not resolve any personal injury or medical monitoring claims, or the claims of owners of property other than 1-4 family residential properties. *Id.* This Settlement parallels the Honeywell Settlement, except to the extent that it establishes a proportionately larger fund that is distributed across three zones, as discussed below.

Class Counsel respectfully move the Court for an award of reasonable attorneys' fees and costs totaling \$1,585,251.33 consisting of \$1,250,000 in attorneys' fees, \$315,251.33 in costs, and \$20,000 in incentive awards (\$10,000 each) for the two named Class B Representatives, Mattie Halley and Leticia Malave.

Consistent with the percentage-of-recovery method favored by this Circuit, the \$1,250,000 fee award sought equates to 27% of the \$5,000,000 common fund *after* the deduction of costs, pursuant to *Halley*. 861 F.3d at 501. The fee award yields a lodestar multiplier under 3.0, which is well within the accepted range in this Circuit. In addition, pursuant to the Settlement Agreement (D.E. 489-2), and based on estimates provided by the Claims Administrator, Epiq Class Action and Claims Solutions, Inc. ("Epiq"), administration expenses of approximately \$90,000 will be paid from the common fund. See Declaration of Steven J. German in Support of Class Counsel's Motion Seeking an Award of Reasonable Costs, Attorneys' Fees, and Incentive Awards in Connection with the PPG Settlement, ¶31("German Decl.").

PPG does not oppose this award. D.E. 489-2, p. 22.

III. HISTORY OF LITIGATION AND WORK PERFORMED

A. Development and Prosecution of Plaintiffs' Claims

Professor Green's R&R documents the protracted and hard-fought nature of this case in his detailed case history up until the time of the Honeywell Settlement, at which time Class Counsel focused their efforts on the claims solely against PPG. See D.E. 476, pp.4-10. Professor Green memorializes the tremendous effort Class Counsel undertook to prosecute the case against

Honeywell and PPG, jointly up until the Honeywell Settlement, and against PPG alone thereafter. R&R, pp. 4-11.

Prosecuting the claims against PPG was arduous. German Decl., ¶¶27-29. PPG aggressively defended the case at every juncture, tangling Plaintiffs up in prolonged discovery disputes over the permissible scope of discovery and depositions (*e.g.*, D.E. 331 (Motion to Quash)) and extensive privilege challenges (*e.g.*, D.E. 334). German Decl., ¶¶27-29. Class Counsel simultaneously worked with experts in air modeling of PPG facility emissions, forensic reconstruction of the PPG facility, standards of care, property damage, economics, and soil chemistry to develop our expert proofs. German Decl., ¶¶27-29

On April 25, 2019, after a lengthy hiatus during administration of the Honeywell Settlement, the Court held a status conference (D.E. 479), resulting in an aggressive Case Management Order to advance the class phase of this case (D.E. 480). The parties were ordered to reinstate and complete within 60 days all class phase discovery, including reciprocal paper discovery updates and supplementation, supplemental depositions of Plaintiffs, the 30(b)(6) deposition of PPG, as well as any remaining non-party depositions. German Decl., ¶¶28-29. The parties were ordered to promptly, thereafter, exchange expert reports. *Id.* Throughout this time, Class counsel and PPG explored settlement opportunities. *Id.*

After preparing for, and appearing at, the April 25, 2019 status conference, Class Counsel promptly resumed its day-to-day work on prosecuting PPG. *Id.* We worked with PPG to formulate a discovery and deposition schedule; we worked directly with our clients to supplement discovery and prepare for supplemental plaintiff depositions; we recommenced our PPG document review and preparation for party and non-party depositions; and we re-engaged our scientific and technical experts and consultants to re-focus our expert case on PPG. *Id.* Class Counsel simultaneously engaged in settlement negotiations off and on until the parties reached a preliminary agreement. *Id.*

Such dual-track case management is generally recognized as constituting best practices. *Id.*

B. The PPG Settlement

Plaintiffs and PPG participated in five separate rounds of settlement negotiations. German Decl., ¶20. The first settlement discussions began in 2011 and included all parties, including Honeywell and PPG. *Id.* This attempt at an early resolution of the case was unsuccessful. *Id.* In September 2015 plaintiffs and PPG engaged in an intense, but ultimately unsuccessful, mediation session with Professor Green. *Id.* Additional unsuccessful settlement efforts were made in December 2017 and March 2018. *Id.* In May 2019 Plaintiffs and PPG reached a settlement in principle, without the benefit of a mediator. *Id.* On June 18, 2019, the settling parties advised the Court of their agreement. D.E. 484. On February 12, 2020, PPG and plaintiffs filed their Joint Motion for Preliminary Approval of Class Action Settlement. D.E. 489. On September 16, 2020, the Court issued an Order Certifying Settlement Class, Preliminarily Approving Class-Action Settlement and Approving Form and Manner of Notice. D.E. 491.

Pursuant to the Settlement Agreement, PPG agrees to provide cash payments to the Settlement Class Members. D.E. 489-2. Notice to the Class Members will be mailed, published in a local newspaper, and posted on a website no later than October 16, 2020. *Id.*, pp. 19-20. The time for objecting, opting out and/or filing a claim will expire 60 days thereafter. *Id.* A Fairness Hearing is scheduled for January 13, 2021 at 2:00 p.m. D.E. 491.

IV. THE ATTORNEY FEES SOUGHT ARE REASONABLE AND SHOULD BE AWARDED

A. The Gunter Factors

“Common fund cases, such as this case, are generally evaluated using a ‘percentage-of-recovery’ approach, followed by a lodestar cross-check.” *Halley*, 861 F.3d at 496 (citing *Sullivan v. DB Investments, Inc.*, 667 F.3d 273, 330 (3d Cir. 2011)). The Third Circuit has articulated seven factors for evaluating the reasonableness of a fee request:

- (1) the size of the fund created and the number of persons benefitted;
- (2) the presence or absence of substantial objections by members of the class to the settlement terms and/or fees requested by counsel;
- (3) the skill and efficiency of the attorneys involved;
- (4) the complexity and duration of the litigation;
- (5) the risk of nonpayment;
- (6) the amount of time devoted to the case by plaintiffs' counsel; and
- (7) the awards in similar cases.

Halley, 861 F.3d at 496 (citing *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 195 n.1 (3d Cir. 2000)). Additional factors that may be considered include the “*Prudential* factors”: (1) the value of benefits accruing to class members attributable to the efforts of class counsel as opposed to the efforts of other groups, such as government agencies conducting investigations, (2) the percentage fee that would have been negotiated had the case been subject to a private contingent fee agreement at the time counsel was retained, and (3) any “innovative” terms of settlement. *Halley*, 861 F.3d at 496 (citing *In re Prudential Ins. Co.*, 148 F.3d 283, 338-40 (3rd Cir. 1998)). Here, each of the “*Gunter* factors,” as well as each of the discretionary “*Prudential* factors,” supports granting Class Counsel’s motion for attorneys’ fees and costs.

Class Counsel discuss each of the *Gunter* and *Prudential* factors, in order.

(1) The Size of the Fund Created is Significant and Benefits Many Property Owners.

This Court previously found that the \$10,000,017 Honeywell Settlement fund for payment to 3,497 properties weighed in favor of the requested fee award of \$2,504,250.00. D.E. 439, p.40. The instant PPG Settlement is proportionately larger, establishing a \$5,000,000 non-reversionary fund for payment regarding 1,487 properties, which weighs in favor of the requested fee award of 1,250,000.¹ Moreover, like the Honeywell Settlement, this settlement proceeds seamlessly with

¹ The parties have computed that the PPG Settlement Class includes 1,487 eligible properties, based on public property records. D.E. 489-2, p.17. The PPG Settlement Class is divided into three geographic Sub-classes based on their distance from the PPG Facility; Zone 1, Zone 2, and Zone 3. Zone 1 will receive 2.5 shares; Zone 2 will receive 2 shares; and Zone 3 will receive 1 share of the Net Settlement funds. D.E. 489-2, p15. Each share equals \$1,087.58. Thus, assuming full participation, the Net Settlement Fund of \$3,324,748.67 will result in payments of \$2,718.96 to each Zone 1 property; \$2,175.17 to each Zone 2 property; and \$1,087.58 to each Zone 3 property. German Decl., ¶10. This is a significant cash recovery, particularly given the nature and complexity

PPG's ongoing obligation to remediate its chromate disposal sites. Given the large Settlement Class size and the substantial cash recovery, this factor weighs in favor of approving the requested fee.

(2) To Date There Has Been No Objection by Members of the Class to the Terms of the Settlement or the Fees and Costs Requested by Class Counsel.

The "absence of large numbers of objections mitigates against reducing fee awards." D.E. 439, p. 41 (citing *In re Cendant Corp., Derivative Action Litig.*, 232 F. Supp. 2d 327, 337-38 (D.N.J. 2002)). Although the Settlement has been public for over seven months, Class Counsel are presently aware of no objections to the Settlement or the requested fees. However, since the objection period does not expire until December 2020, the Court may reserve judgment on this factor.

(3) The Attorneys Involved Have Demonstrated their Outstanding Skill and Litigated this Complex Case Efficiently.

Class Counsel previously described the complex nature of this environmental case, the myriad legal, factual, and scientific challenges they encountered, and their efficient management of this litigation. D.E. 397-2. In turn, this Court held that "there is little reason, if any, to doubt Settlement Class Counsel has the requisite skill and experience to litigate an action such as this." D.E. 439, pp. 48-49.² Moreover, the Court acknowledged that Class Counsel faced "formidable local and national [defense] counsel" for Honeywell. *Id.* PPG's counsel – represented locally by K&L Gates (formerly LeClairRyan), and nationally by Thompson Hine LLP – is no less formidable a defense team.

Settlement Class Counsel remained committed to the PPG portion of this case even after

of this case and its attendant risks. By comparison, Plaintiffs projected that the Honeywell Net Settlement Fund of \$6,133,447.36 for 3,497 would result in payments of \$1,850 to each property. D.E. 415-1, n.5.

² Since this Court's finding that Settlement Class Counsel possesses "the requisite skill and experience to litigate an action such as this" (D.E. 439, pp. 48-49), it has played leadership roles in additional environmental class actions nationwide, including before Your Honor in *Duarte v. United States Metals Refining Co., et al.*, 17-cv-1624.

the Honeywell Settlement. See German Decl., ¶28. It participated in court conferences, discovery, expert case development, client communications, and settlement efforts on behalf of the Class B Plaintiffs, culminating in the establishment of the significant \$5,000,000 settlement fund. *Id.*, ¶¶28-29. The experience, reputation, and ability of Class Counsel, coupled with their success “in the face of formidable legal opposition further evidences the quality of their work” and weighs strongly in favor of the requested fee. See *In re Corel Corp. Inc. Sec. Litig.*, 293 F. Supp. 2d 484, 496 (E.D. Pa. 2003).

(4) The Litigation is Extremely Complex and of Long Duration.

A detailed exposition of this case from initial filing through the Honeywell settlement is set forth at D.E. 476, pp. 4-10, with additional details of the post-Honeywell Settlement litigation described above. The Court, having “already reviewed the complexity of the legal issues and subject matter involved, as well as the duration of fact discovery and overall litigation” * * * “finds that this factor thus weighs in favor of approval.” D.E. 439, p. 48.

As demonstrated above, the PPG portion of the case was no less challenging. After the Honeywell Settlement, Class Counsel demonstrated their resolve to continue the case against PPG by working with numerous scientific, technical, and economics experts; pursuing discovery; challenging privilege assertions; litigating the scope of discovery and depositions; fighting PPG’s Motion to Quash; communicating with clients and supplementing their discovery; appearing in court; and pursuing settlement. While Class Counsel believe their scientific proofs would have prevailed and would have demonstrated that PPG’s massive amounts of chromium indeed invaded plaintiffs’ property, their success was not guaranteed. See *Halley*, 861 F.3d. 489-80 (finding settlement reasonable, in part, because success not guaranteed). See also, *e.g.*, *In re Ins. Brokerage Antitrust Litig.*, 297 F.R.D. at 155; *In re Rite Aid Corp. Securities Litig.*, 396 F.3d 294, 304 (3d Cir. 2005), as amended (Feb. 25, 2005) (considering “risks of establishing liability” in deciding fee

award). Furthermore, had the case not settled against PPG, PPG likely would have contested class certification and raised at least some expert challenges pursuant to Fed. R. Evid. 702 and *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993). Appeals likely would have followed any ruling on these issues and a trial likely would have been years away, with no guaranteed success.

Reaching a settlement was also difficult. Plaintiffs and PPG participated in five separate rounds of settlement negotiations. German Decl., ¶20. The first settlement discussions began in 2011 and included all parties, including Honeywell and PPG. *Id.* This attempt at an early resolution of the case was unsuccessful. *Id.* In September 2015, plaintiffs and PPG engaged in an intense, but ultimately unsuccessful, mediation with Professor Green. *Id.* The parties privately engaged in unsuccessful settlement talks in December 2017 and March 2018. *Id.* In May 2019, after months of discussions, Plaintiffs and PPG reached a settlement in principle, without the benefit of a mediator. *Id.* The settlement now before the Court resulted from five rounds of complicated negotiations over the course of nine years which, even with the great effort and skill of Professor Green, could not be achieved. *Id.*

(5) The Case Presented, and Continues to Present, a Significant Risk of Nonpayment.

This Court previously held that the Honeywell “Settlement Class Counsel’s investment of a substantial effort and resources in prosecuting this action and obtaining this Settlement—on a contingency fee basis—weighs in favor of approval.” D.E. 439, p.49. PPG Settlement Class Counsel’s efforts are no less substantial. Class Counsel continued their pursuit of the case against PPG on an entirely contingent fee basis, assuming a substantial risk that the litigation would yield no or potentially little recovery and leave them uncompensated for their significant investment of time, as well as their substantial expenses, in pursuing PPG. As previously demonstrated, plaintiffs would have faced numerous risks had the case continued to trial, including class certification, summary judgment, causation issues, *Daubert* challenges, trial, and appeals.

This case has now been proceeding for over ten years and Class Counsel have already devoted an enormous amount of time, money, and other resources to litigating it. Such a complicated case could span additional years and involve a lengthy, expensive trial and appeals that plaintiffs are not guaranteed to win. Such risks are evidenced by the objections and appeal that Honeywell Class Counsel faced in connection with the Chandra appeal. *Halley*, 861 F.3d 481. Due to these potential challenges, and others, the risk that plaintiffs could have recovered less, and possibly nothing, had a settlement not been reached weighs heavily in support of granting the requested fee.

(6) Class Counsel Have Devoted a Very Substantial Amount of Time to the Case.

As of the time of the Honeywell fee petition, the Class firms had devoted greater than 27,000 hours to the joint prosecution of the case against Honeywell and PPG. D.E. 439, p.49. The Court therefore found that “[b]ased on the amount of time expended on this matter, this factor weighs in favor of approval.” *Id.* In addition, Class Counsel has devoted 774 hours to the litigation and settlement of the Class B claims exclusively, to date (excluding the instant fee petition). German Decl., ¶39. Accordingly, the amount of time devoted to the case heavily favors approval of the requested fee.³

(7) The Requested Fee Award Is Directly in Line with the *Honeywell* Award and Awards in Similar Cases.

Despite the significant investment of time and money expended by Class Counsel for the prosecution of this case, Class Counsel’s request of \$1,250,000 equates to only 27% of the \$5,000,000 common fund, *after the deduction of costs*, as required by the Third Circuit in *Halley*. Under the circumstances presented by this case, an award of fees equating to 27% of the benefits achieved for the Settlement Class is well within the range of awards in similar cases. This Court previously found that “whether it be about 25% or about 28%, * * * the fee-request is satisfactory

³ The Court may rely on time summaries submitted by the attorneys and need not review actual billing records. *In re Rite Aid*, 396 F.3d at 306-07. Class Counsel provide herewith the detail of each firm’s time and expenses for *in camera* inspection.

in light of the fees typically awarded in this Circuit and the fees typically awarded in environmental cases such as this one.” D.E. 439, p. 50 (citing *Rowe v. E.I. DuPont de Nemours & Co.*, No. CIV. 06-1810 RMBAMD, 2011 WL 3837106 (D.N.J. Aug. 26, 2011); *Martin v. Foster Wheeler Energy Corp.*, No. 3:06-CV-0878, 2008 WL 906472 (M.D. Pa. Mar. 31, 2008)). The Third Circuit affirmed this finding in *Halley*, 861 F.3d at 499-500 (holding that the District Court “did not abuse its discretion in approving fees that represented 28% of the fund after deduction of costs.”).

This Court also found that the requested percentage falls within the range of privately negotiated contingent fees, which also weighed in favor of the fee award. D.E. 439, p.50. Had Class Counsel been able to negotiate a fee contract with the members of the Class at the outset of litigation, Counsel would have recognized that the expenses could easily exceed \$1,000,000 with no guarantee of reimbursement and that thousands of hours could be expended with no recovery. As a result, Class Counsel likely would have requested at least a 27% fee after reimbursement of all litigation expenses. German Decl., ¶35. This factor weighs heavily in favor of the requested fee award.

B. The Discretionary Prudential Factors

In connection with the Honeywell Settlement, this Court held that “[t]wo of the last three *Prudential* factors also weigh in favor of approval of Settlement Class Counsel’s fee request.” D.E. 439, p.50. The same is true here.

First, the benefits to eligible Class B members are attributable to Class Counsel’s efforts. See *id.* As the Court explained, “although there have been numerous government investigations and attempts by administrative agencies to address the contamination in Jersey City, this Settlement will result in actual money payments—which has not occurred from the investigations and administrative agency efforts.” *Id.* *Second*, the percentage requested (about 25% or about 28%) is consistent with what Class Counsel would have negotiated as a contingent fee in the marketplace at the outset of litigation. *Id.*

V. THE LODESTAR CROSS-CHECK IS ACCEPTABLE

“The lodestar method can be used to cross-check the reasonableness of a percentage-of-recovery fee award.” D.E. 439, p. 51 (citing *Sullivan v. D.B. Investments*, 667 F.3d at 330). “The lodestar award is calculated by multiplying the number of hours reasonably worked on a client’s case by a reasonable hourly billing rate for such services based on the given geographical area, the nature of the services provided, and the experience of the attorneys.” D.E. 439, p. 51. “The reasonable attorney rate is determined by reference to the marketplace.” *Id.* “In performing the lodestar cross-check, the district courts should apply blended billing rates that approximate the fee structure of all the attorneys who worked on the matter.” *Id.* After determining the lodestar, the Court should divide the fee request by the lodestar to arrive at a multiplier. *Id.*

Based on Class Counsel’s 27,000-plus hours of work at a blended billing rate of \$342.11 per hour (*Halley*, at 497), the Third Circuit left undisturbed this Court’s finding that the lodestar multiplier of 0.26 calculated in connection with the *Honeywell* Settlement was “reasonable and appropriate.” D.E. 439, p.52; *Halley*, at 499-500.

As Class Counsel explained in the *Honeywell* fee petition, the *Honeywell* lodestar cross check

demonstrates that the \$2,504,250 fee sought * * * represents only 1/4 of the hours Class Counsel have dedicated to the prosecution of all plaintiffs’ claims in Classes A, B and C. Class Counsel therefore believe that it would be appropriate for the Court to exercise its discretion to consider a portion of Counsel’s total hours in determining the reasonableness of a fee if, and when, Counsel seek a fee award in connection with a recovery from PPG on the Class B claims.”

D.E. 397-1, n.4. Allocating a mere 1/3, *i.e.*, 9,000 of these hours to the PPG case would result in a lodestar multiplier of 0.40, which would be well within this Circuit’s acceptable range. See, e.g., *In re Prudential Ins.*, 148 F.3d at 341; *In re Schering-Plough Corp.*, 2013 WL 5505744, at *34 (finding a 1.3 modifier to be very low and stating, “[i]ndeed, lodestar multipliers well above 1.3 and up to

four are often used in common fund cases.”); *In re AT&T*, 455 F.3d 160, 172 (D.N.J. 2006) (2.99 multiplier appropriate); *In re AremisSoft Corp. Sec. Litig.*, 210 F.R.D. 109, 135 (D.N.J. 2002) (4.3 multiplier); *In re Ikon Office Solutions, Inc. Sec. Litig.*, 194 F.R.D. 166, 195 (E.D. Pa. 2000) (2.7 multiplier).⁴

In addition to the joint Honeywell-PPG hours, Class Counsel dedicated an additional 774 hours exclusively to the prosecution of the PPG case (excluding the instant fee petition). German Decl. ¶39. These additional hours were focused on complex discovery matters, experts and consultants, court conferences, and settlement, and thus were reasonably performed exclusively by attorneys with extensive experience (19+ years). German Decl., ¶39. The blended billing rate for these hours is \$640. *Id.*, ¶¶41-44. The resulting lodestar multiplier is 2.52 which, as demonstrated above, is well within this Circuit’s acceptable range. *Id.*

VI. CLASS COUNSEL SHOULD BE REIMBURSED FOR LITIGATION COSTS

Class Counsel seek reimbursement of \$315,251.33 in reasonably and appropriately incurred costs in the prosecution of the case against PPG exclusively, including \$245,237.36 in isolated, non-comingled PPG costs, which were discussed in Professor Green’s R&R (D.E. 476), and an additional \$70,014.07 in costs Class Counsel incurred since then. German Decl., ¶¶52-53. Details of these costs are provided to the Court for *in camera* review and itemized invoices will be furnished upon the Court’s request. See *Halley*, 861 F.3d at 501 (“we are not persuaded class counsel is required to provide itemized expense records * * *”). These costs include over \$269,000.00 in experts; \$17,000 in mediation; \$12,400.00 in travel; \$9,400.00 in discovery and depositions; \$3,500.00 in copies, postage, and shipping; \$520.00 in court fees and process service; and \$500.00 in legal research. German Decl., ¶53. “Courts have permitted class counsel to be reimbursed for, *inter alia*, costs

⁴ This calculation assumes the total number of hours allocated from the joint prosecution of Honeywell and PPG cases is 9,000 (one-third of 27,000) and a blended billing rate of \$342.11 per hour. (*Id.*). This yields a lodestar of \$3,078,990. Settlement Class Counsel seeks \$1,250,000 in fees. (*Id.*). Dividing \$1,250,000 by \$3,078,990 yields a multiplier of 0.40.

advanced for expert witness fees, travel costs, court costs, court reporter and transcript costs, costs for photocopying, telephone and facsimile, postage and shipping, mediation expenses, document management fees, and computer-assisted legal research.” D.E. 476, p.14. These expenses were advanced by Class Counsel with no guarantee of reimbursement and were necessary to develop and prosecute these claims for the benefit of the PPG Settlement Class. German Decl., ¶54. These costs were isolated from other previously reimbursed commingled Honeywell-and-PPG costs and Honeywell exclusive costs. *Id.*, see also D.E. 476, adopted D.E. 477.

VII. REDISTRIBUTION OF JOINT COSTS TO HONEYWELL SETTLEMENT CLASSES

This Court has Ordered that if the action against PPG is resolved with a recovery for such class, then “a *pro rata* allocation shall be made in the form of a reimbursement to the Honeywell Class and subsequently distributed to the Honeywell Class.” D.E. 477.

As Professor Green explained in the context of the *Honeywell* Settlement:

I recommend that the Court grant Class Counsel’s Motion Seeking an Award of Reasonable Costs, and approve Class Counsel’s requested expenses in the amount of \$1,140,023.77 as adequately documented and reasonably and appropriately incurred * * *. These costs were advanced to pursue claims against both Defendants as alleged co-conspirators and as joint and several tortfeasors.

Class Counsel has allocated costs of \$245,237.36 to claims pursued against the non-settling Defendant, PPG, and those costs are not co-mingled with the costs sought as part of the Honeywell settlement. The costs for which Class Counsel seeks recovery from the Settlement Fund are not clearly and exclusively attributable to PPG, and the claims against PPG were not legally and factually independent from the claims against Honeywell. Thus, they are properly recoverable as part of the Class settlement with Honeywell. The Court should further order that if and when the PPG Class case is resolved with a recovery for the Class from which common expenses that benefited both the putative PPG Class and the Honeywell Class may be allocated, a fair, *pro rata* allocation back to the Honeywell Class of the PPG share of such expenses should be made and distributed.

\$1,085,869.58 of these costs were “advanced to pursue claims against both Defendants as alleged co-conspirators and as joint and several tortfeasors” (D.E. 455-1, p.6; D.E. 476, p.27), and each

property in each of the Honeywell and PPG Settlement Classes enjoyed the benefits of Class Counsel advancing these costs on their behalf.⁵

Settlement Classes A, B, and C consist of 4,984 eligible properties in total (A + C = 3,497; B = 1,487). German Decl., ¶58. \$1,085,869.58 in commingled expenses divided by 4,984 eligible properties yield a *pro rata* commingled expense contribution of \$217.87 that each eligible property *should* pay. *Id.* By having had these expenses already deducted from the Honeywell Settlement fund, each Honeywell property has *already* paid \$310.51 in such commingled costs (\$1,085,869.58 / 3,497). *Id.* These Honeywell properties are now entitled to a redistribution of a portion of these costs. D.E. 477. By subtracting \$217.87 from \$310.51 the Court can arrive at a fair *pro rata* allocation back of \$92.64 to each Honeywell property, representing the PPG share of such expenses for distribution from the PPG fund. German Decl., ¶58.⁶

VIII. INCENTIVE AWARDS FOR CLASS REPRESENTATIVES

Class Counsel recommends an incentive award of \$10,000 for each of Mattie Halley and Leticia Malave Incentive awards are not uncommon in class action cases, particularly where a common fund has been created for the benefit of the entire class. D.E. 439, p. 55. This Court

⁵ \$54,154.19 in costs were isolated Honeywell costs. D.E. 455-1, p.6.

⁶ This \$92.64 figure assumes all Class A, B, and C properties participate in the Settlement. The per property final redistribution will have to be adjusted *pro rata* by the Claims Administrator based on the total number of participating properties and consistent with the below formula which can be generically stated as:

- Step 1. $\$1,085,869.58 / \text{total number of Class A, B, and C properties submitting a valid claim} = \text{amount each property should pay}$
- Step 2. $\$1,085,869.58 / \text{total number of Class A and C properties that have submitted a valid Claim} = \text{amount each Class A and C property submitting a valid Claim did pay}$
- Step 3. $\text{Amount each Class A and C property that submitted a valid Claim did pay} - \text{Amount each Class A and C property submitting a valid Claim should pay} = \text{amount of pro rata allocation and reimbursement of joint litigation expenses to each Class A and C property that has submitted a valid claim that Epiq shall distribute from the PPG Settlement Fund.}$

previously approved a \$10,000 payment to each Honeywell Class representative. *Id.*, 55-6.

As was true for the Honeywell representatives, each Class B PPG representative was subjected to invasive written discovery, electronic discovery, document productions, and depositions. German Decl. ¶59. Each spent considerable time communicating with counsel and other class members, and incurred other out-of-pocket expenses directly related to representation of the Classes. *Id.* These incentive awards are not conditioned on the individuals' support for the settlement, and thus, do not cause the interests of the named plaintiffs to diverge from those of unnamed plaintiffs, nor undermine the adequacy of the Class representation. *Id.*; see also D.E. 439, p.56. Further, the incentive payments are not disproportionately large compared to the payments to individual class members. *Id.*; see also D.E. 439, p.56. Finally, to date nobody has objected to the incentive awards even though there was unequivocal notice about the awards being withdrawn from the common fund. *Id.*; see also D.E. 439, p.56.

CONCLUSION

For the foregoing reasons, Class Counsel's application for an award of \$1,250,000 in fees, \$315,251.33 in costs, and \$20,000 in incentive awards should be granted. In addition, the Court should approve the manner of redistribution of joint Honeywell and PPG litigation expenses.

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Respectfully submitted,

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