UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

SEAN ROSE and JAIME ROSE, Plaintiffs, v. THE TRAVELERS HOME AND MARINE INSURANCE COMPANY and THE TRAVELERS INDEMNITY COMPANY, Defendants.	:	Case No. 2:19-cv-00977-GJP

PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF REASONABLE ATTORNEYS' FEES AND INCENTIVE AWARD

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Other Authorities

Rules

I. INTRODUCTION

Class Counsel requests, and Defendant The Travelers Home and Marine Insurance Company ("Travelers") has agreed, subject to court approval, to separately pay, $1.9 million dollars in attorneys' fees and a $10,000 Incentive Award[1] in conjunction with the Final Approval of the Settlement of this matter, where the Settlement could result in a pay-out to over 32,000 potential Settlement Class Members with an estimated monetary value potentially in the range of $9-12 Million assuming the percentage of potential Settlement Class Members who submit valid claims is 20 to 30%.[2]

This matter was first filed on February 1, 2019 to recover damages based on Plaintiffs' allegations that Travelers was not providing Rot Damage coverage as promised in policies and instead was denying claims based on the alleged existence of long-term leaks. The Amended Complaint asserts Breach of Contract, Bad Faith, and a violation of the Unfair Trade Practices and Consumer Protection Act (UTPCPA), and seeks damages for the breach of contract, attorney's fees and punitive damages under the Bad Faith action, and treble damages under the UTPCPA claim.

The merits of the Plaintiffs' claims were clear, and shortly after the action was commenced, the Parties began negotiating a settlement. *See* Declaration in Support of Plaintiffs' and Class Counsel's Unopposed Motion and Memorandum in Support of Attorneys' Fees and Incentive Award ("Class Counsel Decl."), filed contemporaneously herewith as Exhibit A, at ¶¶ 5-8. After an intensive mediation process and extensive informal confirmatory discovery lasting over six (6) months, the Parties arrived at a nationwide settlement and reached a tentative agreement on most

[1] Capitalized terms are defined in the Settlement Agreement.

[2] *See supra.* The actual dollar amount that Settlement Class Members will receive will not be known until after this brief is due to the Court.

of the substantive issues regarding class-wide relief. Thereafter, the Parties continued to negotiate for another three (3) months to resolve outstanding issues, and then negotiated attorneys' fees and the Incentive Award. Finally, on January 10, 2020, the Parties executed a Class Action Settlement Agreement, memorializing the agreement reached subject to Preliminary Approval and Final Approval as required by Federal Rule of Civil Procedure 23. *See id.* at ¶ 9; *see also* Agreement.

The hard-fought Settlement consists of valuable cash payments of substantial amounts to Settlement Class Members who submit valid and timely claims, as well as significant practice changes for Travelers' policyholders. It is a tremendous result for the Settlement Class. The attorneys' fees and the Incentive Award were negotiated only after class-wide relief was finalized, and neither of these payments nor the cost of the Settlement Administrator will be borne out of the untethered, un-capped amount that Settlement Class Members can receive. In other words, Travelers will pay the attorneys' fees and the Incentive Award out of its own pocket such that it has no impact on what Settlement Class Members get.

As set forth in detail herein, Class Counsel requests $1.9 million dollars in attorneys' fees and a single Incentive Award in the amount of $10,000 for the named class representatives, Mr. and Mrs. Rose. Class Representatives were actively involved in this litigation and aided in its resolution, spending significant time gathering information and meeting and communicating with Class Counsel. In short, as Travelers has agreed to separately pay these amounts, the award sought is reasonable and will not reduce the relief being offered to the Settlement Class Members in any way. The Plaintiffs and Class Counsel respectfully request that agreed-upon attorneys' fees and the Incentive Award be approved by the Court.

II. HISTORY AND WORK PERFORMED

The Procedural history of the Civil Action and the Settlement Negotiations are set forth in detail in the Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement and accompanying brief in support thereof [D.E. # 46, filed on January 13, 2020] at pp. 4-6. The Court entered the Preliminary Approval Order on February 4, 2020. *See* D.E. # 48.

A. Notice and Settlement Administration

Since this Court preliminarily approved the Settlement, Class Counsel have worked to ensure that the notice and claims process set out in the Court's preliminary approval order has been followed. *See* D.E. # 50; Class Counsel Decl. at ¶ 15. Among other things, Settlement Class Counsel has:

- regularly communicated with the Court-appointed Settlement Administrator (Epiq Class Action & Claims Solutions, Inc.),
- modified the original dates of notice and the dates triggered off of notice with the Court and Travelers' counsel to account for, first, a ransomware attack on Epiq's computer systems, and second, the widespread impact of the global COVID pandemic,
- audited and analyzed the scope, demographics and breakdowns within the data of the Settlement Class Members,
- reviewed the language and content of the Notice materials,
- reviewed and edited the official settlement website (www.rosesettlement.com),
- reviewed the final, unpopulated Claim Forms A and B,
- negotiated the process and scripts for the automated telephone line (1-866-977-0336) and the call center,
- conferred regarding the strategy and process for providing notice and compiling claims information for Settlement Class Members.

Id. In addition, Settlement Class Counsel have begun fielding inquiries from a number of Settlement Class Members, some of whom have contacted Settlement Class Counsel directly and some of whom have been forwarded to Class Counsel by the Claims Administrator. *Id.*

Moreover, it is anticipated that Settlement Class Counsel will continue to devote significant resources to monitoring the claims administration process, responding to inquiries from Settlement Class Members, moving for Final Approval, appearing and presenting at the final approval hearing, assisting or auditing individual Settlement Class Members with process-based concerns or specific challenges leading up to or through the claims-making procedure, and other tasks going forward. Class Counsel Decl. at ¶ 16. In addition, Settlement Class Counsel will closely monitor and track the deadline for Settlement Class Members to opt out or object to the settlement, and report these findings to the Court. *Id.* (the Opt-Out and Objection deadline is April 4, 2020). According to the most recent status report from the Settlement Administrator, there have been no Opt-Outs or objections to the Settlement so far.

III. THE RELEVANT TERMS OF THE SETTLEMENT

As set forth in the Settlement Agreement, the nationwide Settlement Class consists of 32,245 policyholders that had timely claims for Rot Damage denied despite having a Policy that included Rot Remediation Coverage.[3] Agreement at ¶ 3. The Parties have negotiated a claims-made settlement.[4] Claims fall into one of two categories. the Policy Period category includes insurance claims with rot damage "where the insurance claim falls within the identified applicable suit limitation period for a breach of contract claim." *Id.* at ¶ 15. The amount each claimant can

[3] The parameters of the searching process may have been overinclusive in order to capture all possible class members such that everyone receiving notice may not necessarily have had a denied rot claim making it more difficult to calculate the potential, actual claims' rates.

[4] While no amount certain has been agreed upon, Travelers has agreed to a payment floor in the amount of $2,250,000, such that "[i]f the total valid claims made for all Settlement Class Members for both Policy Period Claims and Statutory Period Claims does not exceed $2,250,000 in the aggregate, the amounts to be paid on valid Policy Period Claims will be increased proportionally. . . ." Settlement Agreement at ¶ 52.

receive varies from $200 to as much as $3,750 depending on how much rot damage is claimed, how much coverage the claimant had for rot damage, and whether the claimant submits documentation of their loss. *Id.* 21,932 fit into this category, of which 1,580 are business accounts. Class Counsel Decl. at ¶ 11.

The Policy Period category includes claims with Rot Damage:

> [W]here the insurance claim does not fall within the identified applicable suit limitation period for breach of contract claims but falls within the longest potentially-applicable statute of limitations for common law bad faith, statutory bad faith, unfair trade practice, consumer protection law or other similar statutory claims against Travelers in the applicable jurisdiction.

Id. at ¶ 15. 10,313 fit into this category, of which 658 are business accounts. Class Counsel Decl. at ¶ 11. Valid Statutory Period Claims will be paid in the amount of $150 and do not require any additional documentation. Settlement Agreement at ¶¶ 51-52.

Further, as a result of this Civil Action, Travelers has implemented a change in practice to pay certain claims for Rot Damage and "not to apply the long-term seepage/leakage provision if the seepage/leakage and resulting damage were unknown to all insureds and hidden within the walls or ceilings or beneath the floors or above the ceilings of a structure." *Id.* at ¶ 59; *see also* Travelers' Declaration, attached to the Preliminary Approval brief as Exhibit 3; Class Counsel Decl. at ¶ 12. The Agreement therefore ensures that not only will Class Members who sustained Rot Damage be compensated for injuries that have already been sustained, but the full scope of the Agreement's value also confers additional, substantial benefits worth potentially tens of millions of dollars for affected Travelers' insureds going forward.

In exchange, the Settlement proposes the Roses and the class members will release Travelers from all potential claims with respect to any and all past Rot Damage. Settlement Agreement at ¶ 18 ("Released Claims").

A. Attorneys' Fees, Costs and Incentive Award

Travelers has agreed to pay Settlement Class Counsel reasonable attorneys' fees of $1,900,000 subject to court approval. *Id.* at ¶ 60; Class Counsel Decl. at ¶ 18. This amount includes any and all actual out-of-pocket expenses in the case incurred by Settlement Class Counsel. *Id.* Settlement Class Counsel will seek an order from the Court awarding this amount and Travelers will not oppose the request. *Id*. Settlement Class Counsel has agreed this is the maximum amount of fees and costs it can recover here. *Id.*

Finally, Settlement Class Counsel will seek one reasonable Incentive Award of $10,000 to be paid jointly to Mr. and Mrs. Rose, the Settlement Class Representatives. Travelers will not oppose the request and the Roses will not accept an award in excess of $10,000. Agreement at ¶ 61. The Incentive Award compensates the Roses for their time and effort in the action, for their participation in the Settlement process, and for the risks they undertook in prosecuting this Civil Action. Class Counsel Decl. at ¶ 19. The Incentive Award and attorneys' fees inclusive of all litigation costs will be paid by Travelers separate and apart from the monetary relief available to the Settlement Class. *Id*. at ¶ 20.

IV. THE REQUESTED ATTORNEY' FEES ARE REASONABLE AND SHOULD BE AWARDED

A. Standard of Review

A "'robust' and 'thorough judicial review of fee applications is required in all class action settlements[.]'" *Sullivan v. DB Investments, Inc.*, 667 F.3d 273, 329 (3d. Cir. 2011) (quoting *In re Diet Drugs*, 582 F.3d 524, 537-38 (3d Cir. 2009)). At the same time, "'the amount of a fee award ... is within the district court's discretion so long as it employs correct standards and procedures and makes findings of fact not clearly erroneous[.]'" *Id.* (quoting *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 299 (3d Cir. 2005)); *see also Ursic v. Bethlehem Mines*, 719 F.2d 670, 675 (3d

Cir.1983) ("the district court has discretion in determining the amount of a fee award ... in view of [its] superior understanding of the litigation and the desirability of avoiding frequent appellate review of what essentially are factual matters").

B. Class Counsel are Entitled to Recovery of Reasonable Attorneys' Fees as Provided by the Settlement Agreement

It is well-settled that plaintiffs' attorneys in a class action lawsuit may petition the court for compensation for any benefits to the class that result from the attorneys' efforts. *See, e.g., Boeing Co. v. Van Gemert*, 444 U.S. 472 (1980). Rule 23 expressly states that "the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the Parties' agreement." Fed. R. Civ. P. 23(h). Here, the Parties' Settlement Agreement provides for an award of attorneys' fees to Settlement Class Counsel of $1.9 million. This amount is to be paid separately by Travelers and is inclusive of all costs and expenses incurred by Settlement Class Counsel. Thus, the only question is whether this amount is reasonable.

C. Using the "Percentage of the Fund" Approach to Determine the Reasonableness of the Requested Amount is Appropriate Here

Courts in the Third Circuit have held that where, as here, attorneys' fees were separately negotiated and will be paid apart from relief awarded to the class, it is appropriate to use the "percentage of the fund" approach to determine if a requested fee award is reasonable.

> Granted, this case does not involve a true common fund because [defendant] is paying the fee out of its own pocket and not through the reimbursement fund. However, where the reality is that the fund and the fee are paid from the same source—in this case, [defendant]—the arrangement 'is, for practical purposes, a constructive common fund,' and courts may still apply the percent-of-fund analysis in calculating attorney's fees.

Dewey v. Volkswagen Aktiengesellschaft, 558 F. App'x 191, 198 (3d Cir. 2014) (citing *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 821 (3d Cir. 1995)); *see also In re Avandia Mktg., Sales Practices & Prods. Liab. Litig.*, 2012 WL 6923367, *2 (E.D. Pa.

Oct. 19, 2012) (holding that while the settlement did not actually create a common fund, it was "akin to a common fund" because the efforts of counsel "have conferred benefits on many" and then using the percentage of the fund analysis as to the requested fee award); *Lake Forest Partners, L.P. v. Sprint Commc'ns Co., L.P.*, 2013 WL 3048919, *2 (W.D. Pa. June 17, 2013) (holding that percentage of the fund analysis was appropriate, even though the attorneys' fee was paid separately by the settling defendant); *Mirakay v. Dakota Growers Pasta Co.*, 2014 WL 5358987, *11 (D.N.J. Oct. 20, 2014) (holding that "[a]lthough the settlement here is not strictly a common fund because the fees were separately negotiated and will be paid apart from money awarded to the class, courts apply many of the same principles as are applied when analyzing a common fund… As such, the Court will analyze common fund factors to determine the reasonableness of the fees requested herein.").[5] Accordingly, it is appropriate to judge the reasonableness of the requested fee award using the percentage of the fund method.

1. Determining the Value of the Settlement

In determining reasonableness under the "percentage of the fund" analysis, courts consider the total gross value of the settlement. *See, e.g., Lake Forest Partners*, 2013 WL 3048919 at *2 (determining the total value of the settlement before proceeding with percentage of the fund analysis). This amount includes out-of-pocket money that will be paid to Settlement Class

[5] It is not just the Third Circuit that has adopted this methodology. In fact, Courts at all levels of the federal system, including the Supreme Court and at least nine Circuits, have approved the use of the percentage method. *See, e.g., Boeing*, 444 U.S. at 478-79; *In re Thirteen Appeals Arising Out of San Juan DuPont Plaza Hotel Fire Litig.*, 56 F.3d 295, 307-08 (1st Cir. 1995); *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 49-50 (2d Cir. 2000); *In re Gen. Motors Corp. Pick-Up Truck Fuel Tanks Prods. Liab. Litig.*, 55 F.3d 768, 821-22 (3d. Cir. 1995); *Rawlings v. Prudential-Bache Props. Inc.*, 9 F.3d 513, 515-17 (6th Cir. 1993); *Harman v. Lyphomed, Inc.*, 945 F.2d 969, 975 (7th Cir. 1991); *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047-50 (9th Cir. 2002); *Gottlieb v. Barry*, 43 F.3d 474, 487 (10th Cir. 1994); *Camden I Condo. Ass'n, Inc. v. Dunkle*, 946 F.2d 768, 774 (11th Cir. 1991); *Swedish Hosp. Corp. v. Shalala*, 1 F.3d 1261, 1268-70 (D.C. Cir. 1993).

Members and the potential value of practice changes made as a result of the lawsuit. Class Counsel Decl. at ¶¶ 11-12; *Kelly v. Bus. Info. Grp., Inc.*, No. CV 15-6668, 2019 WL 414915, at *16 (E.D. Pa. Feb. 1, 2019). Moreover, because attorneys' fees and all costs, including the cost of Notice and administration, will be paid separately and additionally by Travelers (and will not be deducted from payments to Class Members), it is also appropriate to include the agreed-upon amount of these attorneys' fees and costs in assessing the value of the Settlement. *See Lake Forest Partners*, 2013 WL 3048919 at *2 (*citing Boeing*, 444 U.S. at 479) ("Under the percentage-of-the-fund method, it is appropriate to base the percentage on the gross cash benefits available for class members to claim, plus the additional benefits conferred on the class by the [defendant's] separate payment of attorneys' fees and expenses, and the expenses of administration.").

Settlement Class Counsel, with the help of the Settlement Administrator, has enough information to estimate a general range of the Settlement's potential gross value at this time. As set forth in the Preliminary Approval brief [D.E. # 46] and affirmed by this Court's Entry of Preliminary Approval [D.E. # 48], the Settlement is well within the range of reasonableness on a grand scale and on a per Settlement Class Member basis. *See Kelly*, 2019 WL 414915 at *9; Class Counsel's Declaration in support of Preliminary Approval, at ¶¶ 4, 19. What Settlement Class Members will receive is broken down first based on when the claim was filed. *See* Settlement Agreement at ¶ 27. Claims filed within the time period a breach of contract claim could have been brought have more value. The time periods for such "Policy Period Claims" (Agreement at ¶¶ 15, 50) depends on the law of the jurisdiction where the property is located, and those states have considered, among other factors, whether a limiting time period in the policy is permitted, whether the period runs from date of injury or date of claim filing, and the applicable breach of contract statute of limitations. *See* Ex. G to the Settlement Agreement. If the claim was not filed within

the time period a breach of contract claim could be brought, the class member may still have a viable claim if it fits within the longest potentially-applicable statute of limitations for common law bad faith, statutory bad faith, unfair trade practice, consumer protection law or other similar statutory claims against Travelers in the applicable jurisdiction. *See* Agreement at ¶¶ 33, 51. The agreed upon time periods for "Statutory Period Claims" are set forth separately by jurisdiction in Ex. G to the Settlement Agreement. Individual Payments on valid Statutory Period Claims submitted on Claim Form B will be paid in the amount of $150 each. *See* Agreement at ¶ 51. Settlement Class Members with Statutory Period Claims only need to fill out the simplified Claim Form B (attached as Ex. C to the Settlement Agreement) and as long as they are a Settlement Class Member with a rot damage claim, their claim will not be challenged or denied. *See* Settlement Agreement at ¶¶ 33, 46-48.

A number of factors have been considered in determining how much money Settlement Class Members who file Policy Period Claims will be paid. *See, e.g.*, Class Counsel Decl. at ¶ 23. The most significant consideration given is how much was their loss. *Id.* This will be provided by each Settlement Class Member on Claim Form A (attached as Ex. B to the Settlement Agreement) broken down into categories from $1 to greater than $10,000. *See* Agreement at ¶ 50. Other considerations included the amount of the Settlement Class Member's rot damage sublimit and whether the Settlement Class Member is willing to provide supporting documentation of their loss. *Id; see also* Class Counsel Decl. at ¶ 23. The below chart sets forth the amounts Settlement Class Members may recover:

Claimed Rot Damage	**Settlement Payment**
Less than $1,000.00	$200
$1,000 to $2,499.99	$700
$2,500.00 to $4,999.99	$1,350 (without documentation)

	$1,750 (with documentation)
$5,000.00 or more **without documentation**	$1,750
$5,000.00 or more **with documentation** (for Settlement Class Members who have Rot Remediation Coverage subject to a limit of $5,000)	$2,375
$5,000.00 to $9,999.99 **with documentation** (for Settlement Class Members who have Rot Remediation Coverage subject to a limit of $10,000 or more)	$3,000
$10,000 or more **with documentation** (for Settlement Class Members who have Rot Remediation Coverage subject to a limit of $10,000 or more)	$3,750

See Agreement at ¶ 50. The amounts that Travelers may be responsible for are uncapped; that is, there is no maximum amount of exposure here. Class Counsel Decl. at ¶ 24. However, as security in the unlikely event of a low claims rate, the parties have negotiated a "Payment Floor" so if the amount Travelers has to pay does not exceed $2,250,000 in the aggregate, the amounts to be paid on valid Policy Period Claims will be increased proportionally up to the $2,250,000. *Id.*; Agreement at ¶ 52. Even though Settlement Class Counsel is confident the total amount that Travelers will end up paying Settlement Class Members will be well in excess of the Payment Floor, creating a floor (and no cap) guards against the risk of a low claims rate while not limiting any Settlement Class Members' potential recovery, a fantastic safeguard for the Class. *See* Class Counsel Decl. at ¶ 24.

It is theoretically possible that every Settlement Class Member could file a claim for the maximum amount of recovery possible, netting a conservative total maximum potential recovery in the amount of over $53 Million (21,932 Policy Period Members X $2,375 maximum recovery

+ 10,313 Statutory Period Members X $150).[6] However, based on the known data regarding the Settlement Class Members' policies and Settlement Class Counsel's extensive experience handling claims-made settlements, we know that will not be the results of the Notice and claims-made process. Class Counsel Decl. at ¶ 25. Instead, in order to value the amount Settlement Class Members will receive with any level of accuracy, two metrics have to be predicted: (i) the amounts that Policy Period Claimants will submit as Claimed Rot Damage and (ii) the claims rates within the various categories. With the assistance of Epiq and its wealth of experience in administering class action settlements, Settlement Class Counsel has undertaken this analysis. *See* Analysis Chart, attached hereto as Exhibit B. Based on this analysis, we estimate that Settlement Class Members may possibly receive somewhere in the range of $9-12 Million as a result of the Settlement. *Id.;* Class Counsel Decl. at ¶ 25.

Further, the practice change relief assures Travelers' policyholders and Settlement Class Counsel that the allegations at issue in the Civil Action have been remedied. Agreement at ¶ 59. Travelers has implemented a practice change for both homeowners or condominium insurance policies as well as entities with business insurance policies. *Id.* Settlement Class Counsel has reviewed certain written communications to confirm this change in practice, and the attached declaration confirms that this practice change was implemented. *See* Travelers' Declaration, Ex.

[6] It is permissible for a Court to value a Settlement based on the total monetary relief available to the Settlement Class. *See Dewey*, 558 F. App'x at 198 (fee award based on gross value of settlement was justified even though some monies in class member reimbursement fund were unclaimed); *Masters v. Wilhelmina Model Agency, Inc.*, 473 F.3d 423, 437 (2d Cir. 2007) (finding that "[a]n allocation of fees by percentage should … be awarded on the basis of total funds made available whether claimed or not" and reversing district court ruling awarding fees based only on percentage of claims made against the fund). Although district courts have discretion to reduce the amount of fees awarded where the claims rate is abnormally low, "[c]lass counsel should not be penalized" where "class members' individual damages are simply too small to motivate [some of] them to submit claims." *In re Baby Prods. Antitrust Litig.*, 708 F.3d 163, 178 (3d Cir. 2013).

3; Class Counsel Decl. at ¶ 26. The practice changed achieved as a result of the Civil Action and codified by the Settlement is concrete and robust. Agreement at ¶ 59. The impact of the practice change is significant and provides important value not only to the Settlement Class, but will benefit *all* of Travelers' insureds moving forward. *See* Class Counsel Decl. at ¶ 26. In fact, the forward-looking coverage conferred by the practice change will have a tremendous impact for future insureds for a number of years to come. Though difficult to predict or valuate, Settlement Class Counsel estimates that the impact of the practice change will at least equal the money damages awarded to Settlement Class members, ultimately amounting to tens of millions of dollars in coverage that might not have been available but for the Agreement. *Id*. at ¶ 26.

Finally, the amount that Travelers has agreed to separately pay in attorneys' fees and the cost of notice and administration must be factored into the value of the Settlement. As previously noted, Travelers has not objected to paying attorneys' fees in the amount of $1,900,000. Epiq has also estimated the cost of notice and administration to be between $280,000 and $350,000. *See* Epiq Declaration in support of Class Counsel Fees at ¶ 23, attached hereto as Exhibit C. Accordingly, even without including the heretofore unknown future value of the practice change, the total gross monetary value of the Settlement reached can conservatively be estimated at between $11,180,000 and $14,180,000. *See Lake Forest Partners*, 2013 WL 3048919 at *2.

Because the percentage of the fund method for assessing attorney's fees is based upon the percentage of the gross cash benefits available to Settlement Class Members, plus separate benefits in the form of attorney's fees, expenses, and notice costs, *see Lake Forest Partners* at *2, the above figures are the proper measurement by which to assess the propriety of Settlement Class Counsel's fee and expense request. Based on the above estimates, the requested fee and expense award represents, at a maximum, 17% of the total monetary benefits provided by the Settlement

Agreement ($1,900,000 / $11,181,243 = 0.16992744).[7] By any measure, this is a reasonable percentage. *See Esslinger v. HSBC Bank Nevada, N.A.*, 2012 WL 5866074, *14 (E.D. Pa. Nov. 20, 2012) ("In the Third Circuit, fee awards in common fund cases generally range from 19% to 45% of the fund") (collecting cases); *Mirakay*, 2014 WL 5358987 at *12 (noting that "[a]ttorneys' fees in the 30% range are not uncommonly awarded in the Third Circuit, and courts in this Circuit have awarded fees of more than 30%.") (*citing Rowe v. E.I. DuPont de Nemours & Co.*, 2011 WL 3837106 at *22 (D.N.J. Aug. 26, 2011); and *Milliron v. T-Mobile USA, Inc.*, 2009 WL 3345762, at *8 (D.N.J. Sept. 10, 2009), *as amended* (Sept. 14, 2009), *aff'd*, 423 F. App'x 131 (3d Cir. 2011)).

D. THE FACTORS THE COURT SHOULD CONSIDER SUPPORT THE REQUESTED FEE AWARD

This Settlement dictates that the requested attorneys' fees should be reviewed based on the percentage of the fund. *Mirakay v. Dakota Growers Pasta Co.*, No. 13–CV–4429, 2014 WL 5358987, *11 (D.N.J. Oct. 20, 2014).[8] In analyzing "percentage of the fund" fee requests, courts in this circuit apply the factors set forth by the Third Circuit in *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190 (3d Cir. 2000). Those factors include:

> 1) The size of the fund and the number of persons benefited; 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

[7] Of course, this analysis completely discounts any value obtained as a result of the practice change achieved as a result of the Agreement, which Settlement Class Counsel conservatively estimates will ultimately equal, if not surpass, the monetary benefits conferred upon the Settlement Class. *See Kelly*, 2019 WL 414915, at *16.

[8] *Mirakay* holds that:

> [a]lthough the settlement here is not strictly a common fund because the fees were separately negotiated and will be paid apart from money awarded to the class, courts apply many of the same principles as are applied when analyzing a common fund… As such, the Court will analyze common fund factors to determine the reasonableness of the fees requested herein.

Id.

> 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.

Id. at 195 n. 1. This Circuit has also suggested three other factors that may be relevant to the Court's inquiry:

> (8) the value of benefits attributable to the efforts of class counsel to the efforts of other groups, such as government agencies conducting investigations; (9) 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 (10) any innovative terms of settlement.

In re Prudential Ins. Co. Am. Sales Practice Litig., 148 F.3d 283, 338-40 (3d Cir. 1998); *In re Domestic Drywall Antitrust Litig.*, No. 13-MD-2437, 2018 WL 3439454, at *3 (E.D. Pa. July 17, 2018). These factors "need not be applied in a formulaic way… and in certain cases, one factor may outweigh the rest." *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 301 (3d Cir. 2005). Applied here, these factors weigh strongly in favor of the requested fees and expenses.

1. The Size and Scope of the Dollars and the Class

The result achieved is one of the primary factors to be considered in assessing the propriety of an attorneys' fee award. *See Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983) ("most critical factor is the degree of success obtained"); *Cullen v. Whitman Med. Corp.*, 197 F.R.D. 136, 149 (E.D. Pa. 2000) ("the single clearest factor reflecting the quality of class counsels' services to the class are the results obtained").[9] As discussed above, Settlement Class Counsel seek, at a

[9] The Manual for Complex Litigation provides that "[g]enerally, the factor given the greatest emphasis [in awarding a percentage of the recovery] is the size of the [recovery] created, because [the recovery] 'is itself the measure of success … [and] represents the benchmark from which a reasonable fee will be awarded.'" Manual for Complex Litigation § 14.121 (4th ed. 2004) (*quoting* 4 Alba Conte & Herbert B. Newberg, Newberg on Class Actions, § 14:6, at 547, 550 (4th ed. 2002)); *see also Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983) ("critical factor is the degree of success obtained").

maximum, 17% of the estimated value of the Settlement, which is significantly less than the percentage awarded in other class actions. Here, the number of Settlement Class Members and the amount of money each is eligible to receive warrants the requested fees sought, which are to be paid directly by Travelers.

2. No Objections to the Fee Request to Date

The Notice provided advised Settlement Class Members that Settlement Class Counsel would seek an award of attorneys' fees and expenses up to $1,900,000, paid separately by Travelers. *Id.* at ¶ 60; Class Counsel Decl. at ¶ 20. The Notice also advises Settlement Class Members that they may object to these requests by May 13, 2020 and provides instructions on how to do so. *Id*. While that deadline has not yet been reached, no objections have been received thus far. Class Counsel Decl. at ¶ 27. "[T]he total absence of objections to the requested fees weighs in favor of finding that the percentage of the settlement fund requested is appropriate." *Bradburn Parent Teacher Store, Inc. v. 3M*, 513 F. Supp. 2d 322, 338 (E.D. Pa. 2007). If any objections are received after this submission, they will be addressed specifically by Settlement Class Counsel in the Motion for Final Approval, due to the Court on June 12, 2020. Class Counsel Decl. at ¶ 27.

3. The Skill and Efficiency of the Attorneys Involved Weighs in Favor of the Requested Award

The third *Guther* factor – the skill and efficiency of the attorneys involved – also weighs in favor of the requested fees and expenses. Both sides' counsel[10] are qualified and competent class actions litigators, well-positioned to evaluate the strengths and weaknesses of continued

[10] The quality of opposing counsel is also relevant in assessing the quality of class counsel's work. *See Serrano v. Sterling Testing Sys., Inc.*, 711 F. Supp. 2d 402, 420 (E.D. Pa. 2010). In this Civil Action, Travelers was represented by Robinson + Cole (http://www.rc.com/), a nationally prominent law firm that zealously represented the interests of their client, as well as in Philadelphia by Stradley Ronan (https://www.stradley.com/). The ability of Settlement Class Counsel to obtain a favorable Settlement for the Class "in the face of formidable legal opposition further evidences

litigation, as well as the reasonableness of the Settlement. Class Counsel Decl. at ¶ 28. Settlement Class Counsel was well-equipped to handle a case like this one. Golomb and Honik has successfully handled national, regional, and statewide class actions, as well as other complex mass or multi-party actions, throughout the United States in both federal and state courts. *Id*. Wheeler, DiUlio & Barnabei specialize in insurance property damage cases like this one. *Id*. As such, the team of these two firms combining in expertise and resources to litigate this nationwide class action regarding insurance property damage coverage makes sense and allowed Settlement Class Counsel to work efficiently and effectively. *Id.* "The result achieved is the clearest reflection of petitioners' skill and expertise." *In re Linerboard Antitrust Litig.*, MDL 1261, 2004 WL 1221350, at *5 (E.D. Pa. June 2, 2004).

4. The Complexity and Duration of the Litigation

The next *Gunter* factor – the complexity and duration of the litigation – also weighs in favor of the requested fees. The claims involved in this matter are unique in that Settlement Class Counsel is unable to identify any other prior reported class action involving the same theory or facts anywhere in the country. *See* Class Counsel Decl. at ¶ 29. Even before this matter was filed, Settlement Class Counsel engaged in significant investigation and research of the facts and litigated a "test" case in order to properly frame the theories of recovery. *Id*. at ¶ 29. The matter required time-consuming, complex analysis that mixed legal theories with mathematical and financial analysis and involved significant confirmatory informal discovery from Travelers. Class Counsel Decl. at ¶¶ 29-30.

---

the quality of their work." *In re Corel Corp. Inc. Sec. Litig*., 293 F. Supp. 2d 484, 496 (E.D. Pa. 2003).

This case was filed over a year ago, and but for settlement this Civil Action would have continued for a number of additional years. *See Muse v. Dymacol, Inc.*, No. 02–6841, 2003 WL 22794698, at *2 (E.D. Pa. Nov. 7, 2003) ("[s]ettlement . . . will avoid delay in realizing benefit for the affected class members, and will avoid unnecessary litigation costs"). The continued litigation of this matter would require substantial resources. Class Counsel Decl. at ¶¶ 31-32. There would be a significant amount of work to be done, including defending a potential motion to dismiss and performing substantial, formal fact discovery in this case, including depositions and the production, extraction, and analysis of various data from Travelers and potentially other third parties.[11] *Id*. at ¶ 32. The parties would have to brief class certification, which likely would require expert disclosures and additional depositions, and dispositive motions would probably be filed. *Id.* Plaintiffs face the very real prospect of being foreclosed from some or any recovery at all as a result of summary judgment or other motions practice. *Id*. at ¶ 33. Further, all of these matters would require significant time and expense. *Id.* While Plaintiffs and Class Counsel remain committed to their claims, they are also pragmatic that there is no guarantee of success and that substantial obstacles exist at the summary judgment, class certification, and trial phases. *Id.*

The issues in this case were fiercely contested by both sides. Nevertheless, Settlement Class Counsel were able to intelligently analyze the size and scope of the class claims, as well as the strength and weaknesses of those claims, prior to negotiating a settlement. Here, the Parties did not rush to the settlement table or hastily negotiate a deal; on the contrary, it simply made sense to negotiate the Settlement at the outset of the litigation, and the settlement mediation itself took

[11] Even though no formal discovery has been conducted, a plethora of informal discovery has been exchanged here, enabling Settlement Class Counsel to thoroughly evaluate with confidence the strengths and weaknesses of Plaintiff's claims and Travelers' potential defenses. *See* Counsel Decl. Supporting Preliminary Approval at ¶¶ 5, 9, 15, 19.

many months with extensive assistance of the Magistrate Judge before the Parties were able to reach a comprehensive written settlement agreement that they could present to the Court for preliminary approval. The fee sought is further supported by the fact that Settlement Class Counsel do not separately seek an order reimbursing them for their litigation costs and expenses. A settlement now weighs in favor of not only settlement approval, but also a finding that Travelers' separate agreement to pay attorney's fees is reasonable. *See, i.e., In re Merck & Co., Inc. Vytorin Erisa Litigation*, No. 08–CV–285, 2010 WL 547613, at *10 (D.N.J. Feb. 9, 2010) ("inherently complex suit" warranted one-third fee award). Settlement Class Counsel has included all costs and expenses within their requested fee, and costs of Settlement Administration are being separately paid for by Travelers. Settlement Class Counsel overcame significant risks and created an excellent recovery for each Settlement Class Member.

5. The Risk of Nonpayment Was Substantial

Settlement Class Counsel faced a real risk of nonpayment in this matter. It is uncertain whether Plaintiffs would have prevailed on the merits of the claims presented based on an evidentiary record and on behalf of a nationwide class. Here, Settlement Class Counsel have not received any payment to date. Class Counsel Decl. at ¶ 34. Courts in the Third Circuit have consistently recognized that the attorneys' contingent fee risk is an important factor in determining a fee award. *See In re Rent-Way Sec. Litig.*, 305 F. Supp. 2d 491, 516 (W.D. Pa. 2003) (finding "investment of time, personnel and resources" supported awarding requested fee); *see, e.g., In re Flonase Antitrust Litig.*, 291 F.R.D. 93, 104 (E.D. Pa. 2013) ("as a contingent fee case, counsel faced a risk of nonpayment in the event of an unsuccessful trial."). [12] "A determination of a fair

[12] Contingent fee arrangements are relevant because, among other things, they preclude counsel from taking on other cases. *See Boeing v. Van Gemert*, 444 U.S. 472, 478 (1980) (finding as a factor in support of fee that "the law firms prosecuting the case are of small size . . . and thus the

fee for Class Counsel must include consideration of the contingent nature of the fee, the wholly contingent outlay of out-of-pocket sums by Class Counsel, and the fact that the risks of failure and nonpayment in a class action are extremely high." *Pinto v. Princess Cruise Lines, Ltd.*, 513 F. Supp. 2d 1334, 1339 (S.D. Fla. 2007); *see also Vytorin Erisa Litigation*, 2010 WL 547613 at *11.

While Settlement Class Counsel was confident in the Civil Action, there was a real possibility that that Travelers would have been able to defeat the claims in this matter. Throughout the litigation, Travelers has maintained that it had the right to deny rot damage claims, and has raised a number of affirmative defenses to the Complaint to support that position. Class Counsel Decl. at ¶ 35. If this action had proceeded through litigation, this would have been a hotly contested issue, and both sides likely would have retained testifying expert witnesses who would have disagreed about the implications of such coverage decisions. Moreover, Travelers certainly would have opposed certification of a class for litigation purposes in this case.[13]

---

time devoted to the class action precludes other employment."). Here, the class counsel law firms are small in size. *See* Class Counsel Decl., at ¶ 28. Each of these firms are engaged in very busy practices and therefore, the time spent on this litigation was time that could not be spent on litigating other matters. *Id.*; *see also Yates v. Mobile Cnty Pers. Bd.*, 719 F.2d 1530, 1535 (11th Cir. 1983) (recognizing that the expenditure of significant blocks of time, "necessarily had some adverse impact upon the ability of counsel for plaintiff to accept other work"). The *Yates* court further acknowledged that such devotion of time and resources to complex matters like the instant action "should raise the amount of the award." *Id.*; *Schlage Lock Co.*, 505 F. Supp. 2d 704, 708 (D. Colo. 2007).

[13] In the context of a settlement class, certification is more easily attained because the court need not inquire whether a trial of the action would be manageable on a class-wide basis. *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997) ("Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems … for the proposal is that there be no trial."); *accord, Sullivan v. DB Investments, Inc.*, 667 F.3d 273, 303 (3d Cir. 2011) (*en banc*). Thus, "[t]he requirements for class certification are more readily satisfied in the settlement context than when a class has been proposed for the actual conduct of the litigation." *White v. Nat'l Football League*, 822 F. Supp. 1389, 1402 (D. Minn. 1993) (citations omitted); *see also Horton v. Metropolitan Life Ins. Co.*, No. 93-1849-CIV-T-23A, 1994 U.S. Dist. LEXIS 21395, at *15 (M.D. Fla. Oct. 25, 1994).

These risks are highly relevant to the requested award because Settlement Class Counsel handled the case on a contingent fee basis, without any guarantee that they would be compensated for their time or reimbursed for their expenses. Class Counsel Decl. at ¶ 34. From the outset, Settlement Class Counsel understood that they were embarking on a complex, expensive and potentially lengthy litigation, which could have required the investment of significant costs and hours of attorney time. In undertaking this risk, Settlement Class Counsel were obligated to, and did, ensure that sufficient resources were dedicated to prosecuting this Civil Action. Indeed, there are many examples of class actions where lawyers took on the risk of pursuing claims on a contingent basis, expended millions of dollars in time and expenses, and received nothing for their efforts. It is only because Settlement Class Counsel agreed to accept these risks that they were able to represent the Class and achieve a favorable Settlement in this case. Accordingly, this factor also weighs in favor of the requested award.

6. Settlement Class Counsel Have Devoted Substantial Time and Effort to this Civil Action

A review of the time and efforts undertaken by Settlement Class Counsel is appropriate. *Varacallo v. Mass. Mut. Life Ins. Co.*, 226 F.R.D. 207, 253 (D.N.J. 2005). Settlement Class Counsel have invested significant time and effort in this Civil Action. In connection with the present action, among other things, Settlement Class Counsel:

- investigated the facts and law relating to Plaintiffs' claims before initiating this case;
- drafted a well-pleaded Complaint and Amended Complaint;
- met and conferred with Defendants' counsel at the start of the case;
- negotiated a protective order relating to the use of the confidential documents and information produced by Travelers in this case,

- reviewed materials, researched precedent, investigated allegations to understand Travelers' positions and negotiate resolution[14];
- prepared multiple lengthy mediation statements, reports and proposals;
- attended multiple meetings and mediations and participated in several follow-up conferences with Travelers' counsel and representatives;
- negotiated the details of a comprehensive Settlement Agreement over a period of many months and drafted the Settlement Agreement;
- prepared the exhibits to the Settlement Agreement (including the Class Notice, Claim Forms, and proposed Preliminary Approval Order);
- prepared a motion for Preliminary Approval of the Settlement;
- prepared a motion to modify the Preliminary Approval Order in light of events outside the parties' control;
- regularly communicated with the Settlement Administrator to ensure a smooth notice and claims process following the Court's preliminary approval order;
- reviewed the language and content of the settlement website, FAQs, long form Notice, and the scripts for the automated 1-800 telephone number;
- responded to Class Members who contacted Class Counsel directly or who were forwarded to Class Counsel by the Settlement Administrator;
- communicated with the named Plaintiffs throughout the litigation, and;
- prepared the present motion.

Class Counsel Decl. at ¶ 30.

In addition, Settlement Class Counsel will devote further time and effort to preparing a motion for Final Approval of the Settlement, appearing at the Final Approval Hearing, responding to ongoing inquiries from Class Members going forward, addressing any disputes relating to submitted claims, responding to and compiling objections and/or opt-outs (if there are any),

[14] Even though settlement discussions commenced prior to any formal discovery being concluded, there was sufficient information informally and confidentially exchanged and made available to the parties in order for there to be a thorough determination regarding the fairness and adequacy of settlement. *See, e.g.*, Class Counsel Decl. at ¶¶ 22-23. The information exchanged was pivotal for understanding the scope of the Class. *Id.* Thus, the parties and their counsel had an informed view of the strengths and weaknesses of their respective positions, the risks of continued litigation, and an appreciation for the remarkable value this settlement delivers to the Settlement Class when evaluated in this context. *See, e.g.*, Class Counsel Decl. at ¶¶ 25-26.

monitoring the claims processing and overseeing the distribution of settlement payments by the Settlement Administrator. Class Counsel Decl. at ¶ 16. These efforts amply support the requested award in this case, and demonstrate that the fees which will paid to Class Counsel under the Settlement have been well earned.

7. The Requested Award Is Reasonable in Comparison to the Amounts Typically Awarded in Other Class Cases

A review of awards in similar cases also supports the requested award. As discussed above, the requested award conservatively represents 17% of the estimated value of the Settlement, which is far less than the percentage that is typically approved in other class cases. Within the Third Circuit, fee awards generally range from 19% to 45% of the settlement fund or estimated total settlement value. *See, e.g., In re SmithKline Beckman Corp. Sec. Litig.*, 751 F. Supp. 525, 533 (E.D. Pa. 1990) ("Courts have allowed attorney compensation ranging from 19 to 45% of the settlement fund created."); *In re Ikon Office Sols., Inc. Sec. Litig.*, 194 F.R.D. 166, 194 (E.D. Pa. 2000) ("Percentages awarded have varied considerably, but most fees appear to fall in the range of nineteen to forty-five percent."); *cf. La. Mun. Police Emps. Ret. Sys. v. Sealed Air Corp.*, Civil Action No. 03–CV–4372 (DMC), 2009 WL 4730185, at *8 (D.N.J. Dec. 4, 2009) (noting that "[c]ourts within the Third Circuit often award fees of 25% to 33⅓% of the recovery").[15] Settlement Class Counsel's fee request here falls well within, and in fact below, this acceptable range. *See In re Remeron Direct Purchaser Antitrust Litig.*, No. 03-cv-0085 (D.N.J 2005) (awarding fees of one-third of $75 million); *In re Buspirone Antitrust Litig.*, 2003 U.S. Dist. LEXIS 26538, at *11 (S.D.N.Y.2003) (awarding fees of one-third of $220 million); *Bradburn Parent Teacher Store,*

[15] Even in "mega-fund" cases, which this case is definitely not, it is typical for courts to approve awards as high as this one. *See, i.e. In re Avandia Mktg., Sales Practices & Prods. Liab. Litig.*, 2012 WL 6923367, *7 (E.D. Pa. Oct. 19, 2012); *Casey v. Citibank, N.A.*, 2014 WL 4120599 (N.D.N.Y. Aug. 21, 2014).

Inc. v. 3M, 513 F. Supp. 2d 322, 336-341 (E.D. Pa. 2007) (awarding fees in the amount of 35% of $35 million); *In re Vitamins Antitrust Litig.*, No. 99-197, 2001 WL 34312839, at *10 (D.D.C. July 16, 2001) (awarding fees of 34% of an approximately $360 million fund). Class Counsel requests an award of $1.9 million dollars, which amounts to only approximately 17% of the total estimated gross monetary value of the Settlement.

Here, the requested fee is substantially less than is typical, demonstrating its reasonableness.

8. The Benefits Accruing to the Class are 100% Attributable to the Efforts of Settlement Class Counsel

This factor contemplates whether Settlement Class Counsel benefited from "the efforts of other groups, such as government agencies conducting investigations." *In re AT&T Corp.*, 455 F.3d 160, 165 (3d Cir. 2006). Here, the results obtained are solely the result of Settlement Class Counsel's efforts. There was no government investigation. The case was developed, litigated and settled solely by Settlement Class Counsel.

9. The Fee Sought Here is Less than Typical Contingent Fee Agreements

The second *Prudential* factor also weighs in favor of the requested award. The fee requested is far less than commonly negotiated fees in the private marketplace. *See Glaberson v. Comcast Corp.*, No. CV 03-6604, 2015 WL 5582251, at *14 (E.D. Pa. Sept. 22, 2015) (noting that a 30% fee is routinely privately negotiated in contingent fee cases); *Ikon*, 194 F.R.D. at 194 ("[I]n private contingency fee cases . . . plaintiffs' counsel routinely negotiate agreements providing for between thirty and forty percent of any recovery."). In a standard contingent fee arrangement, including those entered into by Settlement Class Counsel in individual actions, the attorneys receive a much higher percentage (typically 33-40%) as a fee, and are entitled to costs and expenses in addition to the negotiated fee. Class Counsel Decl. at ¶ 36. Here, Settlement Class

Counsel's requested award of approximately 17% of the total estimated value of the Settlement is objectionably reasonable.

10. The Settlement Agreement contains a Thoughtful, Creative and Innovative Structure to Provide Fair Relief to Different Class Members

Finally, the Settlement in this Civil Action provides first-of-a-kind relief for the insurance practices at issue in connection with rot damage coverage. Class Counsel Decl. at ¶ 37. As noted above, Plaintiffs are unaware of any other case against Travelers relating to rot damage coverage successfully resolved on a class-wide basis. *Id.* Thus, the relief provided by the Settlement is unique. *See Cullen v. Whitman Med. Corp.*, 197 F.R.D. 136, 148 (E.D. Pa. 2000) ("The complexity of litigating this case was increased because of few similar cases for counsel to rely on as precedent."). Further, the structure of what each Settlement Class Member receives has been carefully crafted to match the nature of when the policyholder filed a claim, their coverage, the amount of losses they suffered, and the extent of their proof of loss. *See infra* at Section IV-C(1). Finally, the additional relief in the form of a practice change provides a benefit that will aid current and future policyholders not affected by the instant litigation. *Cullen*, 197 F.R.D at 151 ("Class members will receive cash and/or debt forgiveness in addition to non-monetary relief that will impact future students…").

In sum, the $1,900,000 fee requested here is supported by the *Gunter* and *Prudential* factors, consistent with fees awarded in this Circuit and warrants the Court's approval.

E. NO LODESTAR CROSSCHECK IS REQUIRED

Under the lodestar method, the district court "determines an attorney's lodestar by multiplying the number of hours he or she reasonably worked on a client's case by a reasonable hourly billing rate for such services given the geographical area, the nature of the services provided, and the experience of the lawyer." *Gunter,* 223 F.3d at 195 n.1. In undertaking this

approach, the Court "is not required to engage in this analysis with mathematical precision or 'bean-counting'" and "may rely on summaries submitted by the attorneys" without "scrutinize[ing] every billing record." *Henderson v. Volvo Cars of N. Am.*, LLC, No. CIV.A. 09-4146 CCC, 2013 WL 1192479, at *15 (D.N.J. Mar. 22, 2013) (quoting *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 306-07 (3d Cir. 2005)).

Although an award of attorney's fees subject to the percentage-of-recovery method may be evaluated by a lodestar cross-check, such an exercise is "not necessarily determinative." *In re Baby Prod. Antitrust Litig.*, 708 F.3d 163, 179-180 (3d Cir. 2013). Rather, it is this Court's mandate simply to "determine whether the level of distribution provided to the class by the settlement reflects a failure of class counsel to represent adequately the interests of the entire class." *Id*. at 179. As noted above, the percentage-of-recovery analysis is particularly appropriate in "common fund" cases such as this one, as it "is designed to allow courts to award fees from the fund 'in a manner that rewards counsel for success and penalizes it for failure.'" *Cullen*, 197 F.R.D. at 147 (quoting *Prudential*, 148 F.3d at 333). This approach increases the incentives for cautious expenditure and helps align the interests of the class more closely with those of counsel. *See Ikon*, 194 F.R.D. at 193.

On the other hand, "the lodestar may encourage attorneys to delay settlement or other resolution to maximize legal fees, and it places a great deal of pressure on the judicial system, as the courts must evaluate the propriety of thousands of billable hours." *Ikon* at 193; Third Circuit Task Force on Court Awarded Attorney Fees, 108 F.R.D. 237, 246–49 (1985). Furthermore, and relevant to this case, the lodestar may also compensate attorneys insufficiently for the risk of undertaking complex or novel cases on a contingency basis. *Id*. For these reasons, the Third Circuit has made it clear that district courts should apply the percentage method of calculating fees

in common fund cases such as this one, in order to "vigilantly guard against the lodestar's potential to exacerbate the misalignment of the attorneys' and the class's interests." *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prod. Liab. Litig.*, 55 F.3d 768, 821 (3d Cir. 1995) ("Here … the court should probably use the percentage-of-recovery rather than the lodestar method as the primary determinant, although the ultimate choice of methodology will rest within the district court's sound discretion."); *see also In re Cendant Corp. Sec. Litig.*, 404 F.3d 173, 183 n. 4 (3d Cir. 2005) (affirming district court's percentage of the fund fee award, even though district court did not conduct lodestar cross-check).

Courts in other Circuits also do not require that Class Counsel use the lodestar method to calculate attorney fees, even as a "cross-check" on the reasonableness of a percentage fee. *In re Quantum Health Resources, Inc.*, 962 F. Supp. 1254, 1257 (C.D. Cal. 1997) ("As critics have noted, the lodestar method needlessly increases judicial workload, creates disincentive for early settlement, and causes unpredictable results."); *In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d 1330, 1363 (S.D. Fla. 2011) ("[C]ourts in this Circuit regularly award fees based on a percentage of the recovery, without discussing lodestar at all."). While use of the lodestar method is not necessary here, Class Counsel has indeed spent thousands of man-hours working on this case.[16] *See* Class Counsel Decl. at ¶ 30.

V. THE REASONABLENESS OF THE REQUESTED AWARD IS FURTHER DEMONSTRATED BY THE FACT THAT IT IS INCLUSIVE OF EXPENSES

The reasonableness of the requested $1.9 million award to Class Counsel is further demonstrated by the fact that it is inclusive of both attorneys' fees ***and expenses***. In the Third Circuit, requests by counsel for reimbursement of expenses (in addition to attorneys' fees) in class

[16] If the Court were to require class counsel to perform a lodestar cross-check, one can promptly be provided through a supplemental pleading.

cases are commonly granted as a matter of course. *See, e.g., In re Flonase Antitrust Litig.*, 291 F.R.D. 93, 106 (E.D. Pa. 2013) (awarding costs incurred by class counsel); *Mirakay*, 2014 WL 5358987, at *14 (same). The fact that these expenses are baked into the $1,900,000 attorney award amount sought by Class Counsel further demonstrates that the requested amount is reasonable and appropriate.

VI. THE REQUESTED SERVICE AWARD IS REASONABLE

For the reasons set forth below, Settlement Class Counsel requests that the Court approve a single Incentive Award in the amount of $10,000 total to the Roses as Class Representatives in this matter.

It is routine to give awards to class representatives because of their additional efforts in zealously prosecuting the case. *Sullivan*, 667 F.3d at 333, n.65. "The purpose of these payments is to compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation" and "to reward the public service of contributing to the enforcement of mandatory laws." *Id.* (quoting *Bredbenner v. Liberty Travel, Inc.*, No. 09-905 2011 WL 1344745, at *22 (D.N.J. Apr. 8, 2011)). "Courts use the following factors to evaluate the appropriateness of awards: (1) the financial, reputational, and personal risks to the plaintiff; (2) the degree to which the plaintiff was involved in discovery and other litigation responsibilities; (3) the length of litigation; and (4) the degree to which the named plaintiff benefitted as a class member." *Carroll v. Stettler*, No. 10-2262, 2011 WL 5008361 at *9 (E.D. Pa. Oct. 19, 2011) (citing *Chakejian v. Equifax Info. Servs., LLC*, 275 F.R.D. 201, 220 (E.D. Pa. 2011); *Hall v. Best Buy Co., Inc.*, 274 F.R.D. 154, 173 (E.D. Pa. 2011)). In the Third Circuit, service awards may be paid to class representatives to reward efforts that benefit the class. Indeed, numerous courts have awarded named class plaintiffs for the benefits they have conferred on the class, and the amount requested here is consistent with typical awards. *See, e.g., Linerboard*, 2004 WL 1221350, at *19

(approving award of $25,000 for each class representative); *In re Residential Doors Antitrust Litig.*, MDL 1039, 1998 WL 151804, at *9 (E.D. Pa. Apr. 2, 1998) (approving $10,000 award to each representative).

In this case, each of the four factors favor approval of the requested award. First, the Roses continue to insure their home with Travelers; bringing this lawsuit subjected them to potential the financial, reputational, and personal risks of, among other things, retaliation (in the form of termination of the customer relationship) which could have been misinterpreted by other creditors as a negative inference. As it turns out, Travelers here agreed to resolve this matter, but the Roses had no way to predict this outcome at the outset. Second and third, the Roses expended significant time and effort on behalf of the class. Among other things, they gathered information during the investigation of claims and reviewed and produced documents; met with class counsel in person, assisted with the drafting and approval of the complaint; and attended mediations and assisted in class-wide settlement. Class Counsel Decl. at ¶ 39. While the class litigation only lasted a year, the damage to the Roses' home occurred in August of 2018, so they have been living with this case for a long time. *Id.* Fourth, the Roses themselves befitted as Settlement Class Members and have dedicated themselves to pursue the Civil Action for not just themselves but for the benefit of the Settlement

Class as a whole. *Id*. at ¶ 40. Without their actions in protecting the class, there would have been no case, and many of the class members would have experienced continuing and increasing damages for years.[17] *Id*. Additionally, it bears repeating that the requested Incentive Award will

[17] Further, as a result of this lawsuit, Travelers agreed to practice changes which positively impacts all Travelers policyholders going forward. *See* Agreement Doc. 46-2 at ¶ 1.8.l; Class Counsel Decl. at ¶ 12.

be paid entirely by Travelers and will have no effect on the benefits received by the Settlement Class Members.

The requested joint Incentive Award of $10,000 to the Class Representatives is reasonable, justified and well deserved based on their involvement in the Civil Action and should be granted.

VII. CONCLUSION

For the reasons set forth herein, Plaintiffs respectfully request that the Court grant the following relief:

1) Award Class Counsel $1,900,000 in attorneys' fees, inclusive of all costs and litigation expenses, to be paid separately by Travelers to Settlement Class Counsel;

2) Award $10,000 jointly to Mr. and Mrs. Rose as the named Class Representatives, to be paid separately by Travelers.

Respectfully submitted,

BY: */s/ Anthony DiUlio* ANTHONY DiULIO, ESQUIRE Attorney I.D. No.: 312763 One Penn Center - Suite 1270 1617 JFK Boulevard Philadelphia, PA 19103	BY: */s/ Kenneth J. Grunfeld* Kenneth J. Grunfeld, Esquire Attorney I.D. No.: 84121 GOLOMB & HONIK 1835 Market Street, Suite 2900 Philadelphia, PA 19103 kgrunfeld@golombhonik.com
Attorneys for Plaintiffs and the Proposed Class	

Dated: April 28, 2020