

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

In Re
METLIFE DEMUTUALIZATION LITIGATION

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This Document Relates To All Actions

**MEMORANDUM IN SUPPORT OF FINAL APPROVAL OF SETTLEMENT
AND PLAN OF ALLOCATION OF SETTLEMENT PROCEEDS**

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INTRODUCTION

This memorandum is submitted in support of Lead Plaintiffs' motion, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, for final approval of the settlement of the class action litigations (respectively the "Federal Action" and the "State Action") against defendants Metropolitan Life Insurance Company ("MetLife Co.") and MetLife, Inc. (collectively, "defendants") and for final approval of the plan of allocation of the settlement proceeds.¹ The terms of the settlement are set forth in the Stipulation of Settlement (the "Stipulation"), which was previously submitted to the Court and is attached as Exhibit A. Lead Counsel also submits the declaration of Jared B. Stamell, which fully describes the litigation in the Federal Action, and is attached as Exhibit B. Attached at Exhibit C is the memorandum in support of the settlement prepared by Lead Counsel in the State Action, which includes the declaration of Ian Stoll describing the history of the litigation in state court. The two declarations and exhibits are an integral part of this submission and the Court is respectfully referred to them for a detailed description of, *inter alia*, the history of the litigation from the beginning through settlement; the nature of the claims; the investigations undertaken in the actions; the negotiations leading to the settlement; the value of the settlement, as compared to the risks and uncertainties of continued litigation; the plan of allocation for the settlement; and a description of the services plaintiffs and their counsel provided. Contemporaneously, Lead Counsel is together filing a Memorandum in Support of Lead Counsel's Joint Application for an Award of Attorneys' Fees and Reimbursement of Expenses, as well as separate applications for compensation awards for Lead Plaintiffs in the Federal Action and State Action, respectively.

¹ Lead Plaintiffs in the federal action are Mary Adele DeVito, Michael A. Giannattasio, Kevin L. Hymms and Harry S. Purnell, III.

I. The Court Should Grant Final Approval

The settlement is fair, reasonable and adequate. It provides for defendants to pay \$50 million in return for a release of any further liability for the claims made in the Federal and State Actions. The allocation that plaintiffs propose for the settlement is \$32.5 million to the Closed Block, \$2.5 million as a *cy pres* award to a health-related non-profit organization, and \$15 million to attorneys' fees, reimbursement of litigation expenses and compensation as provided in the PSLRA to the representative plaintiffs.

The settlement is the product of nine years of hard fought litigation. In the Federal Action, the parties briefed and argued two motions to dismiss, four motions for summary judgment, three motions relating to class certification, a score of discovery motions, two petitions for mandamus, two motions for interlocutory appeal, an appeal, a dozen motions *in limine*, plus other pre-trial and trial motions. The docket shows dozens of hearings and conferences before two district court judges, three magistrate judges and a Second Circuit panel before this case was resolved. In the course of discovery hundreds of thousands of pages were produced by defendants and studied by plaintiffs. Dozens of witnesses were deposed. There were two separate jury selections. Stamell Decl. ¶ 1. Finally, after a jury was empanelled and the parties were ready with their opening statements, the parties reached a settlement. *Id.* ¶¶ 169, 170. The mediation, conducted by court-appointed Special Master, Richard J. Davis, Esq., followed years of unsuccessful efforts at settlement by the parties themselves. *Id.* ¶ 170. Because the case did not settle until trial, plaintiffs were well-informed about the strengths and weaknesses of the class claims. Lead Plaintiffs and their counsel believe that they have reached a fair resolution of these claims. It is Lead Counsel's and Lead Plaintiffs' opinions that, given the uncertainty of prosecuting the trial and possible appeals, the proposed settlement is fair, reasonable, and adequate.

Courts acknowledge the “overriding public interest in favor of settlement” of class actions because it is “common knowledge that class action suits have a well deserved reputation as being the most complex.” *Strube v. Am. Equity Inv. Life Ins. Co.*, 226 F.R.D. 688, 698 (M.D. Fla. 2005) (citation and internal quotations omitted). “[I]n evaluating the settlement of a securities class action ... ‘federal courts have long recognized that such litigation is notably difficult and notoriously uncertain.’” *In re Sumitomo Copper Litig.*, 189 F.R.D. 274, 281 (S.D.N.Y. 1999) (citations omitted; emphasis omitted). Indeed, courts recognize that “[s]ecurities class actions are generally complex and expensive to prosecute,” *In re Gilat Satellite Networks, Ltd.*, 2007 WL 1191048, at *10 (E.D.N.Y. Apr. 19, 2007), and thus “[c]lass action suits readily lend themselves to compromise because of the difficulties of proof, the uncertainties of the outcome, and the typical length of litigation. There is a strong public interest in quieting any litigation, and this is ‘particularly true in class actions.’” *In re Luxottica Group S.p.A. Sec. Litig.*, 233 F.R.D. 310 (E.D.N.Y. 2006) (citations omitted).

The standards governing approval of class action settlements in this Circuit are well established. *See City of Detroit v. Grinnell Corp.*, 495 F.2d 448 (2d. Cir. 1974). In *Grinnell*, the Court of Appeals held that the following are factors to be considered in evaluating a class action settlement:

- (1) the complexity, expense and likely duration of the litigation,
- (2) the reaction of the class to the settlement,
- (3) the stage of the proceedings and the amount of discovery completed,
- (4) the risks of establishing liability,
- (5) the risks of establishing damages,
- (6) the risks of maintaining the class action through the trial,
- (7) the ability of the defendants to withstand a greater judgment,
- (8) the range of reasonableness of the settlement fund in light of the best possible recovery, [and]
- (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

495 F.2d 448, 463 (2d. Cir. 1974), abrogated on other grounds by *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43 (2d. Cir. 2000) (citations omitted). Applying the factors stated by the Second Circuit to the facts in this case strongly suggests that the proposed settlement should be approved.

A. Application of the Grinnell Factors

1. The Complexity, Expense and Likely Duration of the Litigation Supports Approval of the Settlement

Typical in securities class actions, this litigation involves complex legal and factual issues. This complexity is reflected in the many fully-briefed motions argued in the District Court and the Second Circuit in the nine years since the original complaint was filed. Stamell Decl. ¶ 1. Had this matter continued through trial, extensive evidence would have been presented by both parties through fact and expert witnesses and by entering into the record over 1,000 proposed trial exhibits. Stamell Decl. ¶ 128. The proof on many disputed issues – which involve complex financial concepts – would likely have included a battle of experts, leaving the trier of fact with difficult questions to resolve. *Id.* ¶¶ 141, 157.

This action was aggressively litigated by both sides. As set forth in the attached Declaration of Jared Stamell, by the time the parties reached a settlement, Lead Counsel had, among other things: (i) conducted an extensive factual investigation into the events and circumstances underlying the initial complaint filed in 2000 and the claims added in the second amended complaint filed in 2004 (Dkt #120), as further amended just before trial by the Court's Stipulation and Order Amending the Complaint (Dkt #491) (the "Complaint"); (ii) obtained and reviewed a decade of defendants' regulatory filings with the New York Insurance Department; (iii) thoroughly researched the law pertinent to the claims against defendants and potential defenses; (iv) prepared and submitted thousands of pages of legal briefings in, *inter alia*, motions

to dismiss, motions opposing discovery, motions for summary judgment, motions for interlocutory appeal, motions for class certification, mandamus petitions, an appeal and motions *in limine*, (v) conducted extensive document discovery that involved the review and analysis of hundreds of thousands of pages of documents produced by defendants and their actuarial and financial advisors; (vi) conducted or defended over thirty depositions of current and former MetLife officer, directors, and employees, experts and other representatives; and (vii) consulted with experts on actuarial issues regarding demutualization, actuarial valuation techniques and practices, and other actuarial and financial subjects pertinent to the litigation. *See generally* Stamell Decl. ¶¶ 1 – 172.

Pursuit of this action has been costly. As mentioned above, this litigation has now been ongoing for over nine years. Numerous legal motions have been fully and extensively briefed. The case has been litigated in both federal District Court and at the Second Circuit Court of Appeals (while the State Action has been litigated at both the trial level and the State intermediate appeal level). Total costs in both Federal and State Actions total approximately \$4.7 million. Stamell Declaration in Support of Lead Counsel’s Joint Application for an Award of Attorney’s Fees and Reimbursement of Expenses (“Stamell Fee Decl.”) ¶ 16. The cost of class notice alone in the Federal Action exceeded \$1.8 million, and the cost of expert witnesses exceeded \$1 million. *See* Exhibit E to Stamell Fee Decl.

Moreover, a trial would probably not have concluded this action. Time-consuming and expensive post-trial motions and appeals were inevitable. Defendants were and are represented by extremely capable counsel who specialize in defending complex insurance and securities class actions, such as this case, and left no stone unturned in defending their clients, adding to the complexity and expense of the continued prosecution of this case. Ultimately, the litigation

could have continued for many more years, with the risk of either no recovery for the classes or substantial loss to defendants. The settlement provides an immediate and certain recovery to members of the classes and unequivocally avoids substantial, continued and uncertain litigation.

2. The Classes' Reaction To The Settlement Supports Approval of the Settlement

The reaction of the class to a settlement is a significant factor to be weighed in considering its adequacy. *In re Am. Bank Note Holographics*, 127 F.Supp.2d 418, 425 (S.D.N.Y. 2001). Lack of objection is strong evidence of the settlement's fairness. *In re PaineWebber Ltd. P'Ships Litig.*, 171 F.R.D. 104, 126 (S.D.N.Y. 1997).

Although the date to submit has not past, so far the classes' reaction to the settlement is positive and supports approval. As ordered by the Court (Dkt #536), notice of the settlement was provided by publication. The notice, a copy of which is attached as Exhibit A to the Stipulation of Settlement, was published twice in the week of November 9 and twice in the week of November 16, in each of *USA Today*, *The Wall Street Journal*, *The New York Times*, and the *New York Law Journal*. The deadline for submitting objections is December 24, 2009. To date, only two objections have been received.² Two objections from a class of millions supports the fairness of the settlement. *See Strougo v. Bassini*, 258 F.Supp.2d 254, 258 (S.D.N.Y. 2003).

3. The Stage of the Proceedings and the Amount of Discovery Completed Supports Approval of the Settlement

A court considers the state the litigation has reached before settlement and the extent of discovery completed to ensure that plaintiffs have had access to sufficient material to evaluate their case and to assess the adequacy of the settlement proposal in light of the strengths and weaknesses of their position. *In re Luxottica Group S.P.A. Sec. Litig.*, 233 F.R.D. at 312. This

² Plaintiffs will separately prepare and submit to the Court a full response to all objections before the scheduled December 30, 2009 fairness hearing.

case went all the way to trial before settlement. Stamell Decl. ¶ 169. There were complaints and amended complaints, multiple motions to dismiss and for summary judgment, extensive discovery, repeated petitions for interlocutory appeal and an appeal. Stamell Decl. ¶ 1. The parties voir dired not one, but two separate jury venire. *Id.* ¶¶ 150, 163. Pre-trial rulings on key issues were known; opening statements were at the ready. *Id.* ¶¶ 153, 157, 159, 168.

Lead Counsel in this case had “a clear view of the strengths and weaknesses of the case” and was “able to make an informed decision on the merits of the settlement.” *Luxottica*, 233 F.R.D. at 312. This factor supports approval of the settlement.

4. The Risks of Establishing Liability Supports Approval of the Settlement

Plaintiffs faced substantial difficulty in proving their claims. In order to prove liability in the Federal Action, plaintiffs had to demonstrate for their 12(a)(2) claims that defendants omitted or misstated material facts in the documents sent to class members regarding the demutualization, that such omissions and misstatements rendered the documents misleading, that the documents constituted a prospectus offering or selling a security, and that in the exercise of reasonable care defendants should have known of and corrected the misleading information. For their 10(b) claims, plaintiffs had to demonstrate that these omissions or misstatements were made with scienter and were the cause of plaintiffs’ injuries. As in any securities fraud action under the PSLRA, plaintiffs faced a very high burden in demonstrating that defendants acted with the requisite scienter.

Plaintiffs’ case centered around four main allegations: (i) the demutualization documents misled policyholders as to why MetLife chose one method of demutualization as opposed to another available method by suggesting that the chosen method was the most appropriate option, without revealing that the method not chosen would have resulted in greater consideration for policyholders; (ii) the documents misled policyholders regarding the value of the variable

component of policyholder consideration relative to the estimated value of policyholders' contribution to surplus, specifically, by omitting the fact that MetLife had calculated policyholders' contribution to surplus at over \$15 billion, while the value of the stock distributed to policyholders was less than \$10 billion; (iii) the documents misled policyholders by claiming that future dividends would not be diminished in any way, without disclosing that the Closed Block constituted a limitation on the dividends that would be paid; and (iv) the documents misled policyholders regarding the calculation of the fixed component of policyholder consideration by suggesting that the determination of 10 shares as the fixed component was based on actuarial concepts and standards of practice rather than an arbitrary rule of thumb.

Defendants, for their part, denied all claims against them and asserted that the documents sent to policyholders before the demutualization were complete, accurate and not misleading, and, therefore, there were no misleading omissions or misrepresentations on which the Plaintiffs and class members could have relied when deciding how to vote. Defendants further asserted that the demutualization was beneficial for the company and its policyholders, and that MetLife and its directors had no intent to mislead anybody.

Defendants were prepared to present multiple experts opining that the demutualization was properly conducted according to precedent, and that each of the allegations of wrongdoing alleged by plaintiffs was in fact completely in line with how previous demutualizations have been done. Defendants would have argued to the jury that the demutualization plan, as presented to policyholders, was fair. In support of this, MetLife would have presented as evidence the decision of the New York State Superintendent of Insurance, which, following his own extensive review, consultation both with MetLife and his own experts, and following a public hearing on the issue, found that MetLife's plan of demutualization was fair and equitable to policyholders.

MetLife was also prepared to submit to the jury the materials sent to policyholders in previous New York state demutualizations as demonstration that the MetLife demutualization was proper and done according to precedent. Stameil Decl. ¶¶ 141, 157, 159, 168.

The risk that plaintiffs would fail to prove liability was high. This factor supports approval of the Settlement.

5. The Risks of Establishing Damages Supports Approval of the Settlement

As with liability, plaintiffs faced obstacles in proving damages. Significantly, as indicated by the Court during pre-trial hearings, even if Plaintiffs were successful in proving liability, it still remained possible – perhaps even likely – that the Lead Plaintiffs in the Federal Action, all of whom opted for shares of stock in the new company rather than cash or policy credits, would have been unable to prove any damages at all. Such a result may have required locating a class representative who received cash in the transaction and who was willing to intervene and could claim damages to represent the damaged members of the class.

The thrust of plaintiffs’ damages theory was that for each share of MetLife stock distributed to policyholders in the demutualization, valued at the IPO price of \$14.25 per share, policyholders had contributed approximately \$26 to surplus. Based on the actuarial standard of practice on the allocation of consideration in a demutualization,³ damages to class members were at least the difference between the two figures. The standard of practice, at ¶3.2.2, provides that what is called the “variable component of consideration” should be reasonable in relation to policyholders’ contribution to surplus and that approximate equality was reasonable. MetLife calculated that policyholders’ contribution to surplus was \$15.34 billion, but that policyholders

³ Actuarial Standard of Practice 37, “Allocation of Consideration in Mutual Life Insurance Demutualizations.” Plaintiffs’ Trial Exh. 45 (attached as Exhibit D).

received a variable component of only 590,000,000 shares of stock at \$14.25 per share, which amounted to \$8.4 billion. Damages, therefore, would be the difference.

Plaintiffs' theory of damages would have had to overcome significant opposing arguments. First, defendants would have argued that \$15.34 billion was not a calculation relevant to the value of policyholders' membership interests. This calculation was an actuarial computation of the estimated present value of policyholders' contribution to surplus of the company, which according to defendants, is not related to the value of what policyholders actually would have received if MetLife had remained a mutual company. Second, defendants would have argued that the calculation established an equitable basis to allocate consideration in the demutualization, not to establish the value of the membership rights policyholders were surrendering. Defendants also would have argued that under no law, either state or federal, and in no transaction, has a demutualizing company been required to distribute to policyholders the full value of contribution to surplus. Although a Method 2 demutualization under New York law may provide for that, Method 2 is an option only where that value was available, and here defendants would have argued it was not. The \$15.34 billion simply did not exist, they would say.

Defendants also would have argued that plaintiffs' damages argument relies on the false theory that policyholders are "owners" of the mutual company, a theory this Court rejected as a matter of law, holding in defendants' favor in a motion *in limine*. Stamell Decl. ¶ 157. The Court specifically ordered that jury instructions be submitted to advise the jury on this point of law. *Id.* Further, defendants would have argued that, in any event, except for a five-month period immediately following the demutualization, MetLife's stock has traded *above* the \$26 per share plaintiffs claimed that the class members were surrendering. Defendants would have

pointed to these stock market prices to argue that the transaction was a success, even by plaintiffs' standard, and that just about every policyholder, instead of being damaged, in fact profited as a result of the transaction or, for those who received cash, had the opportunity to do so. And those policyholders who elected to receive cash instead of stock had exercised their free choice to do so. Therefore, establishing damages would have been difficult. The risk that plaintiffs would be unable to prove damages was high.

This factor supports approval of the settlement.

6. The Risks of Maintaining the Class Action Through Trial

The ability to maintain the class action through trial was not a substantial risk. While the Court ordered that the trial be bifurcated into two phases – a liability phase and a damages phase – the Court also ordered that it would not modify the class as defined.⁴ The Court recognized that possible conflicts may have arisen among differently situated class members during the damages phase of the trial and that subclasses might be required during that phase. However, no arguments have been raised within the class regarding the adequacy of Lead Plaintiffs.

Importantly, the Second Circuit has noted that following certification of a class, if it later turns out that the named plaintiffs are not adequate class representatives, then the district court is not required to decertify the class. *Sirota v. Solitron Devices, Inc.*, 673 F.2d 556, 572 (2d Cir. 1982) (“Although a district court may decertify a class if it appears that the requirements of Rule 23 are not met, it need not decertify whenever it later appears that the named plaintiffs were not class members or were otherwise inappropriate class representatives.”). In accord with Supreme Court precedent, the Second Circuit stated that “provided that the initial certification was proper ... the claims of the class members would not need to be mooted or destroyed because subsequent events or the proof at trial had undermined the named plaintiffs' individual claims.”

⁴ See 10/13/09 Hearing Tr. at 13 (Dkt. #534).

Id.; see also *Franks v. Bowman Transportation Co., Inc.* 424 U.S. 747 (1976) (once a class has been properly certified the action will not be dismissed by the subsequent mootness of the claim of the class representative). If a new class representative had been required, the proper approach would have been to provide an opportunity to substitute a new named plaintiff. *McAnaney v. Astoria Fin. Corp.*, 2007 WL 2702348, *13 (E.D.N.Y. Sept. 12, 2007).

This factor weighs neither for nor against approval of the Settlement.

7. The Ability of the Defendants to Withstand Greater Judgment

MetLife is one of the largest publicly-traded companies in the United States. It is financially healthy and well capitalized. It could withstand a greater judgment. This factor weighs neither for nor against approval of the Settlement.

8. The Range of Reasonableness of the Settlement Amount in Light of the Best Possible Recovery And All the Attendant Risks of Litigation Supports Approval of the Settlement.

The last two substantive factors courts consider are the range of reasonableness of the settlement amount in light of (i) the best possible recovery and (ii) litigation risks. In analyzing these last two factors, the issue for the court is not whether the settlement represents the “best possible recovery,” but how the settlement relates to the strengths and weaknesses of the case. *Grinnell*, 495 F.2d 463. The court considers and weighs the nature of the claim, the possible defenses, the situation of the parties, and the exercise of the business judgment in determining whether the proposed settlement was reasonable. *Id.* at 462. Courts agree that the determination of a “reasonable” settlement “is not susceptible of a mathematical equation yielding a particularized sum.” *Paine Webber*, 171 F.R.D. at 130 (citations omitted). Instead, “in any case, there is a range of reasonableness with respect to a settlement.” *Newman v. Stein*, 464 F.2d 689, 693 (2d. Cir. 1972).

Plaintiffs submit that the settlement is within the range of reasonableness in light of the best possible recovery and all the attendant risks of litigation, as described above and in the Stamell Declaration. In assessing whether a settlement is fair, reasonable, and adequate, courts often examine “the negotiating process by which the settlement was reached” to determine whether the settlement was the result of “arm’s length negotiations” by counsel who has “the experience and ability . . . necessary to effective representation of the class’s interests.”

Weinberger v. Kendrick, 698 F.2d 61, 74 (2d Cir. 1982).

The settlement here is presumptively fair because it is the product of informed arm’s-length negotiations between Lead Counsel and defendants’ counsel with the assistance of the very capable Special Settlement Master Richard Davis. *See, e.g., Wellman v. Dickinson*, 497 F.Supp. 824, 830 (S.D.N.Y. 1980), *aff’d*, 647 F.2d 163 (2d Cir. 1981); Stamell Decl. ¶¶ 158, 169.

This factor supports approval of the settlement.

II. The Plan of Allocation is Fair and Reasonable and Should be Approved

Plaintiffs request that the Court approve allocation of the settlement, which allocates \$32.5 million to the Closed Block, \$2.5 million to a health-based organization in the form of a *cy pres* award, and \$15 million to attorneys’ fees, reimbursement of expenses and compensation to lead plaintiffs for their service. Stipulation ¶¶ 15 – 20; *see also* Lead Counsel’s Joint Application for an Award of Attorneys’ Fees and Reimbursement of Expenses.

The allocation of the settlement must be fair and reasonable. *In re Sterling Foster & Co., Inc. Sec. Litig.*, 238 F.Supp.2d 480, 486 (E.D.N.Y. 2002) (citing *PaineWebber*, 171 F.R.D. at 133). The purpose of developing a plan of allocation is to devise a method that permits the equitable distribution of limited settlement proceeds to eligible class members. *Beecher v. Able*, 575 F.2d 1010, 1016 (2d Cir. 1978). Courts recognize that “the adequacy of an allocation plan

turns on whether counsel has properly appraised itself of the merits of all claims, and whether the proposed apportionment is fair and reasonable in light of that information.” *PaineWebber*, 171 F.R.D. at 133.

Here, allocating most of the settlement (\$32.5 million) by adding assets to the Closed Block is fair and reasonable because it will result in the distribution of those assets to class members in proportion to their contributions to surplus. Furthermore, there is no administrative cost to paying out money from the Closed Block because the existing Closed Block administration takes care of that. Class members benefit because the additional assets in the Closed Block flows through to class members in the form of increased policyholder dividends.

A small portion of class members, however, will not benefit from the allocation of Settlement Proceeds to the Closed Block, such as class members who have died or whose policies have lapsed. With these class members in mind, the settlement includes a *cy pres* allocation (\$2.5 million). Approving a settlement which includes a *cy pres* allocation is appropriate under the circumstances here. *See Fears v. Wilhelmina Model Agency*, 315 Fed.Appx. 333, 336-336 (2d Cir. 2009).

As the Second Circuit has observed, *cy pres* remedies are appropriate “in circumstances in which direct distribution to individual class members is not economically feasible...” and where “the proof of individual claims would be burdensome or the distribution of damages costly.” *Masters v. Wilhelmina Model Agency, Inc.*, 473 F.3d 423 (2d. Cir. 2007) (citations omitted). Direct distribution in this action would be overwhelmingly burdensome because the costs associated with such an undertaking would be greater than the *cy pres* allocation. Therefore, the Court should approve the *cy pres* award. *See Masters*, 472 F.3d at 436; *see also In re Pharmaceutical Industry Average Wholesale Price Litigation*, 2009 WL 3933088 at *7 (1st

Cir. Nov. 19, 2009); A. Conte & H.B. Newberg, 4 *Newberg on Class Action* § 11:20, at 28-31 (4th ed.2002).

The allocation proposed by plaintiffs is based upon and subject to the Court awarding \$15 million to reimburse the litigation expenses incurred of approximately \$4.7 million, with the balance, approximately \$10.3 million, awarded for attorneys' fees and to the plaintiffs to compensate them for their service as class representatives. The application for reimbursement of expenses, fees and compensation is the subject of a separate brief and supporting papers.

For these reasons, the plan of allocation is fair and reasonable, and should be approved.

III. The Notice to the Class Satisfies Due Process

Individualized mail notice of pendency was sent, and publication notice was provided to class members shortly before trial. Rule 23(e) requires that settlement notice fairly apprise class members of the terms of the proposed settlement, but does not require individualized notice.

This Court concluded that publication notice was sufficient. As the Court noted, in view of the millions of members of the class, notice to class members by individual postal mail, email, or radio or television advertisements would be neither necessary nor appropriate. Dkt. #530 at 5.

Publication notice included all information required by Rule 23, including: (a) the amount of the settlement; (b) a statement about application for attorneys' fees and expense reimbursement; (c) the name, telephone number, and address of Lead Counsel in both the Federal and State Actions to answer questions from class members; (d) a statement explaining why the parties propose the settlement; (e) a description of the proposed plan of allocation; and (f) the right of each class member to opt-out or object to the settlement, attorneys' fees and expenses, or the plan of allocation. As a result, the published notice fairly apprised the class members about the settlement and their rights as required by Rule 23 and due process. *Consol. Edison, Inc. v. Northeast Utils.*, 332 F.Supp.2d 639, 652 (S.D.N.Y. 2004).

The schedule for notice ordered by the Court provided reasonable, appropriate and ample opportunity for class members to object if they wish to do so. *See County of Suffolk v. Long Island Lighting Co.*, 710 F.Supp 1422, 1424 (E.D.N.Y. 1989).

CONCLUSION

For the reasons stated above, Lead Plaintiffs request that the Court approve the settlement as fair, reasonable, and adequate, approve the plan of allocation as fair and reasonable, and enter final judgment.

December 22, 2009

Respectfully submitted

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