

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE HERLEY INDUSTRIES INC.  
SECURITIES LITIGATION

CIVIL ACTION

No. 06-2596 (JRS)

CLASS ACTION

**FILED**

SEP 13 2010

MICHAEL E. KUNZ, Clerk  
By \_\_\_\_\_ Dep. Clerk

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**ORDER APPROVING CLASS COUNSEL'S MOTION FOR  
AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES AND  
CLASS REPRESENTATIVE'S REQUEST FOR REIMBURSEMENT OF EXPENSES**

THIS MATTER having come before the Court on September 13, 2010, on the Motion of Labaton Sucharow LLP and Kirby McInerney LLP ("Class Counsel"), for an award of attorneys' fees and reimbursement of expenses and Class Representative Norfolk County Retirement System's request for reimbursement of expenses, and the Court, having considered all papers filed and proceedings conducted herein, and otherwise being fully informed in the premises and good cause appearing therefor;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. All of the capitalized terms used herein shall have the same meanings as set forth in the Stipulation and Agreement of Settlement, dated July 2, 2010 (the "Stipulation"). This Court has jurisdiction over the subject matter of this application and all matters relating thereto.
2. This Court has jurisdiction to enter this Order awarding attorneys' fees and litigation expenses and over the subject matter of the Consolidated Complaint and all parties to the consolidated Action including all Class Members.
3. Class Counsel is entitled to a fee paid out of the common fund created for the benefit of the Class. *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478-79 (1980). In class action

suits where a fund is recovered and fees are awarded therefrom by the court, the Supreme Court has indicated that computing fees as a percentage of the common fund recovered is the proper approach. *Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984). The Third Circuit recognizes the propriety of the percentage-of-the fund method when awarding fees. *See In re AT&T Corp., Sec. Litig.*, 455 F.3d 160, 164 (3d Cir. 2006).

4. Notice of Class Counsel's motion for attorneys' fees and reimbursement of litigation expenses was given to all Class Members who could be identified with reasonable effort. The form and method of notifying the Class of the motion for attorneys' fees and litigation expenses met the requirements of due process, Rule 23 of the Federal Rules of Civil Procedure and Section 21D(a)(7) of the Securities Exchange Act of 1934, 15 U.S.C. § 78u—4(a)(7), as amended by the Private Securities Litigation Reform Act of 1995, and constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled thereto.

5. Class Counsel has moved for an award of attorneys' fees of 33% of the gross Settlement Fund, or \$3,300,000, plus interest at the same rate as that earned by the gross Settlement Fund. Class Counsel's fee and expense application has the support of the Class Representative.

6. This Court concludes that the percentage-of-recovery is appropriate for awarding attorneys' fees in this Action and hereby adopts said method for purposes of this Action.

7. The Court finds that a fee award of 33% of the gross Settlement Fund is consistent with awards made in similar cases. *See, e.g., In re Corel Sec. Litig.*, 293 F. Supp. 2d 484, 496 (E.D. Pa. 2003) (awarding 33-1/3% of \$7,000,000 settlement fund).

8. Accordingly, the Court hereby awards attorneys' fees of 33 % of the gross Settlement Fund, or \$3,300,000, plus interest at the same rate as that earned by the Settlement Fund. The Court finds the fee award to be fair and reasonable. Said fees shall be allocated among Class Counsel in a manner in which they believe reflects each counsel's contribution to the prosecution and resolution of the Action.

9. In making this award of attorneys' fees and expenses, the Court has analyzed the factors considered within the Third Circuit as set forth in *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 195 n.1 (3d Cir. 2000). In evaluating these factors, the Court finds that:

- a) Class Counsel has conferred a substantial benefit to the Class.
- b) Class Counsel has expended considerable time and labor over the course of the Action investigating, analyzing and prosecuting the claims. This is evidenced by the Class Counsel's practice before the Court and Class Counsel's representations that they have: thoroughly investigated the claims asserted; conducted class, fact and expert discovery; moved for, and were granted, class certification; defended motions to dismiss; moved for partial summary judgment; defended against Defendants' motion for summary judgment; made numerous motions in limine; opposed Defendants' numerous motions in limine, substantially prepared for trial; and negotiated and advocated for a substantial settlement for the Class. The services provided by Class Counsel appear to have been successful and efficient, resulting in an outstanding recovery for the Class without the substantial expense, risk, and delay of continued litigation and trial. Such efficiency and effectiveness supports the requested fee percentage.

c) In this contingent litigation, Class Counsel faced considerable risks of no recovery throughout the litigation, given, among other things, Defendants' scienter, loss causation and damages defenses.

d) This Action required skill and raised novel and complex issues relating to, among other things, proving securities fraud based on false and misleading statements made in connection with Herley's contracting relationship with the Government and the Government's investigation of Herley and Herley's CEO in connection with alleged fraudulent bids of certain Government contracts. Also, cases brought under the federal securities laws are notoriously difficult and uncertain. Such cases are often seen as undesirable. Despite the novelty and difficulty of the issues raised, Class Counsel secured an excellent result for the Class.

e) There have been no substantive objections to the fee or expense request that cast doubt on the reasonableness of the request.

f) Class Counsel are very experienced and skilled practitioners in the securities litigation field, and have considerable experience and capabilities as class action specialists. Their efforts in efficiently bringing the Action to a successful conclusion against the Defendants conferred a substantial benefit to the Class.

10. Class Counsel's total lodestar is \$7,301,494. A 33% fee represents a reduction to lodestar and a multiplier of .452. This further supports the Court's finding that the fee request is fair, adequate, and reasonable.

11. Class Counsel has also requested an award of reimbursement of expenses in the amount of \$686,203.05, plus interest at the same rate as that earned by the gross Settlement

Fund. Having reviewed the expense information submitted by Class Counsel, the Court hereby approves the requested amount and awards expenses of \$686,203.05, plus interest at the same rate as that earned by the Settlement Fund.

12. Class Counsel has also requested an award of reimbursement of expenses on behalf of the Claims Administrator, Garden City Group (“GCG”) in the amount of \$130,302.91, plus interest at the same rate as that earned by the gross Settlement Fund. Having reviewed the expense information submitted by GCG, the Court hereby approves the requested amount and awards expenses of \$130,302.91, plus interest at the same rate as that earned by the Settlement Fund.

13. The Court has also considered the Class Representative's request for reimbursement of its reasonable costs and expenses (including lost wages) directly relating to the representation of the Class, pursuant to the Private Securities Litigation Reform Act (“PSLRA”), 15 U.S.C. §78u-4 (a)(4). The Court hereby awards Norfolk County Retirement System the requested expenses of \$2,2353.20, which will be paid from the Gross Settlement Fund upon entry of this order.

14. The awarded attorneys’ fees and expenses of Class Counsel shall be paid immediately after the date this Order is entered subject to the terms, conditions, and obligations of the Stipulation, which terms, conditions, and obligations are incorporated herein.

15. Exclusive jurisdiction is hereby retained over the parties and the Class Members for all matters relating to this Consolidated Action, including the administration, interpretation, effectuation or enforcement of the Stipulation and this Order, including any further application

for fees and expenses incurred in connection with administering and distributing the Settlement proceeds to the members of the Class.

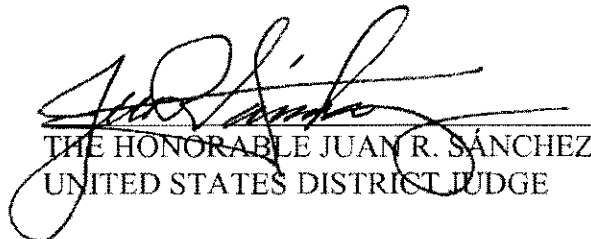
16. Any appeal or any challenge affecting this Court's approval regarding any attorneys' fees and expense application shall in no way disturb or affect the finality of the Judgment.

17. In the event that the Settlement is terminated or does not become Final in accordance with the terms of the Stipulation, this Order shall be rendered null and void to the extent provided by the Stipulation and shall be vacated in accordance with the Stipulation.

18. There is no just reason for delay in the entry of this Order, and immediate entry by the Clerk of the Court is expressly directed.

IT IS SO ORDERED.

DATED: September 13, 2010

  
THE HONORABLE JUAN R. SANCHEZ  
UNITED STATES DISTRICT JUDGE