IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CARONLINA
CHARLESTON DIVISION

Civil Action No.: 2:04-cv-22005-DCN

QUINTON BROWN, et al., individually and on behalf of the class they represent,

Plaintiffs,

vs.

NUCOR CORPORATION and NUCOR STEEL-BERKELEY,

Defendants.

FINAL ORDER APPROVING SETTLEMENT, CLASS COUNSEL FEE PAYMENT AND CLASS REPRESENTATIVE SERVICE PAYMENTS

This matter is before the Court on the following motions:

1. The Parties' Joint Motion and Memorandum of Law in Support of Motion for Final Approval of Settlement Agreement (Dkt. Entry No. 610) (hereinafter "Joint Motion for Class Settlement"); and

2. Plaintiffs' Counsel's Motion for Attorney Fees and Costs (Dkt. Entry No. 611) ("hereinafter "Motion for Attorneys' Fees and Costs).

On December 27, 2017, this Court entered an Order (Dkt. No. 607) in which the Court:

a. preliminarily approved the Settlement Agreement as being sufficiently fair, reasonable, and adequate, and in the best interests of the Parties and in accordance with the law, contingent upon final approval at the Final Fairness Hearing;

b. approved the proposed form of Class Notice as constituting the best notice practicable under the circumstances and the claims procedure proposed by the Parties and described in the Settlement Agreement;

c. stayed all other proceedings in this case until further order of the Court, except as may be necessary to approve and implement the Settlement Agreement; and,

d. scheduled a Final Fairness Hearing for February 15, 2018 at 9:00 a.m.

On February 15, 2018, the Court held a Final Fairness Hearing. There was only one objection that was submitted, and that objection was limited to a request not to be included in the settlement. There was no other opposition from any Settlement Class Member to the Joint Motion for Class Settlement or the Plaintiffs' Motion for Attorneys' Fees and Costs. Accordingly, the Court hereby grants the Motion for Class Settlement and the Motion for Attorneys' Fees and Costs.

I. FINAL APPROVAL OF CLASS ACTION SETTLEMENT

The Parties have agreed to a settlement that provides comprehensive injunctive relief and monetary relief totaling $22,500,000, based on a class of African-Americans who are or were employed by Nucor Corporation or Nucor Steel Berkeley at the Nucor Berkeley manufacturing plant in Huger, South Carolina at any time between December 2, 1999 and April 27, 2011, in the beam mill, hot mill, cold mill, melting, maintenance, and shipping departments, and who may have been discriminated against because of Nucor's challenged practices (collectively with the Class Representatives, the "Settlement Class Members"). Excluded from the Settlement Class are all Nucor employees who have previously opted-out of this case. Nucor also agreed not to object to attorneys' fees of up to $10,000,000 in fees in addition to documented expenses. Likewise, Nucor agreed not to object to the Class Representatives receiving a service payment of up to $40,000.00 per Class Representative.

Nucor agreed to the foregoing in exchange for the Settlement Class Members, as well as their respective assigns, executors, administrators, successors and agents, releasing, resolving, relinquishing and discharging each and all of the Released Parties from each and all of the Released Claims. Both the term "Released Parties" and "Released Claims" are defined in the Settlement Agreement.

The Court finds that the settlement and the notice procedure comply with Rule 23 of the Federal Rules of Civil Procedure, and that the Class Action Settlement is fair, reasonable and adequate.

II. NOTICE PLAN

Pursuant to the Preliminary Order, Class Counsel gave direct notice of the proposed settlement to 157 Settlement Class Members. The list of notice recipients was determined using data provided by Nucor and data gathered by Class Counsel during the course of litigation. Only four Notices were returned as undeliverable and Class Counsel worked diligently to obtain updated addresses to use to re-send the Notice. Two of the four Settlement Class Members whose Notices were originally returned as undeliverable submitted timely claim forms. Information about the settlement was also available on a dedicated webpage.

The Court finds that the notice plan was reasonably calculated, under the circumstances, to apprise Settlement Class Members of: (a) the nature of the action; (b) the definition of the class certified; (c) a description of the class claims, issues and defenses; (d) the identities of the Parties; (e) a summary of the terms of the proposed Settlement; (f) notice that the Settlement Class Member may object and appear at the Final Fairness Hearing; (g) information regarding the manner in which objections can be submitted; and (h) the binding effect of the class judgment and the scope of release of class and individual claims. As such, the Court finds that the Notice fully satisfied the requirements of the Federal Rules of Civil Procedure, including Federal Rule of Civil Procedure 23(c)(2) and (e), the United States Constitution (including the Due Process Clause), the rules of this Court, and any other applicable law, and provided sufficient notice to bind all Settlement Class Members, regardless of whether a particular Settlement Class Member received actual notice.

III. FAIRNESS, REASONABLENESS, AND ADEQUACY

Rule 23(e) requires that the Court approve any proposed settlement or compromise in a class action suit after notice of the settlement be given to all class members, after a hearing, and after finding that the settlement is fair, reasonable, and adequate. As noted above, notice of the settlement, as well as an opportunity to object to the settlement, has been provided to all known Settlement Class Members. The Court held a hearing at which the Parties agreed to the class settlement.

There is a "strong judicial policy in favor of settlements, particularly in the class action context." Reed v. Big Water Resort, LLC, 2016 U.S. Dist. LEXIS 187745, No. 2:14-cv-01583-DCN, *14 (D. S.C. May 26, 2016); see also Bennett v. Behring Corp., 737 F.2d 982, 984 (11th Cir. 1984); In re Jiffy Lube Sec. Litig., 927 F.2d 155, 158-59 (4th Cir. 1991). Fed. R. Civ. P. 23(e) states in part:

> (e) Settlement, Voluntary Dismissal, or Compromise. The claims, issues, or defenses of a certified class may be settled, voluntarily dismissed, or compromised only with the court's approval. The following procedures apply to a proposed settlement, voluntary dismissal, or compromise:
>
> (1) The court must direct notice in a reasonable manner to all class members who would be bound by the proposal.
>
> (2) If the proposal would bind class members, the court may approve it only after a hearing and on finding that it is fair, reasonable, and adequate.
>
> (3) The parties seeking approval must file a statement identifying any agreement made in connection with the proposal.

Fed. R. Civ. P. 23(e) requires that the court approve any proposed settlement or compromise in a class action suit and that notice of the settlement be given to all class members. "Settlement of the complex disputes often involved in class actions minimizes the litigation expenses of both parties and also reduces the strains such litigation imposes upon already scarce judicial resources." Reed, 2016 U.S. Dist. LEXIS 187745 at *15.

Although Rule 23(e) does not delineate a procedure for court approval of settlements of class actions, the courts generally have followed a two-step procedure. Horton v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 855 F. Supp. 825, 827-28 (E.D.N.C. 1994) (see also Armstrong at 312; In Re Mid–Atl. Toyota Antitrust Litigation, 564 F. Supp. 1379, 1384 (D. Md. 1983)). First, the court conducts a preliminary approval or pre-notification hearing to determine whether the proposed settlement is "within the range of possible approval" or, in other words, whether there is "probable cause" to notify the class of the proposed settlement. See Armstrong, 616 F.2d at 314; Toyota Antitrust Litigation, 564 F. Supp. at 1384. Second, assuming that the court grants preliminary approval and notice is sent to the class, the court conducts a "fairness" hearing at which all interested parties are afforded an opportunity to be heard on the proposed settlement. The ultimate purpose of the fairness hearing is to determine if the proposed settlement is "fair, reasonable, and adequate." Armstrong, 616 F.2d at 314; see also In Re Ames Department Stores, Inc. Debenture Litigation, 150 F.R.D. 46, 53 (S.D.N.Y. 1993); Chatelain v. Prudential–Bache Securities, Inc., 805 F. Supp. 209, 212 (S.D.N.Y. 1992).

A. The Proposed Class Settlement is Fair, Reasonable, and Adequate to all Class Members

As a general matter, the Court's function in assessing a proposed class settlement is to determine whether, as a whole, it is fair, reasonable, and adequate to class members. U.S. v. N.C., 480 F.3d 574, 581 (4th Cir.1999); Fed. R. Civ. P. 23(e)(2). "The Court's role is not to engage in a claim-by-claim, dollar by dollar evaluation, but to evaluate the proposed settlement in its totality." Borcea v. Carnival Corp., 238 F.R.D. 664, 673 (S.D. Fla. 2006). "Settlement approval is within the Court's discretion, which should be exercised in light of the general judicial policy favoring settlement." In re Sumitomo Copper Litig., 189 F.R.D. 274, 280 (S.D.N.Y. 1999) (internal quotations omitted).

This settlement is now ripe for final approval. The District Court of South Carolina evaluates the following factors in determining whether a proposed settlement is fair, reasonable, adequate and proper for final approval:

1. The fairness of the settlement negotiations and the views and experience of counsel;

2. The relative strength of the parties' cases as well as the uncertainties of litigation on the merits;

3. The complexity, expense and likely duration of the litigation;

4. The adequacy of the settlement amount viewed against the risks and expenses of continued litigation; and

5. The stage of the litigation, including the factual record developed

Reed, 2016 U.S. LEXIS 187745 at *16-17; S. Carolina Nat. Bank, 749 F. Supp. at 1423. In the instant case, the Parties have worked extensively, vigorously, and cooperatively to ensure a fair, reasonable, and adequate settlement that is in the best interest of the Settlement Class Members.

i. The proposed settlement is a fair settlement negotiated by experienced counsel at arms' length.

"In a class action settlement, there is a presumption of fairness, reasonableness, and adequacy when it is achieved through arms-length negotiations between experienced and capable counsel who are necessary to effect representation of the class interest after meaningful discovery." Id. at *17 (quotation omitted). The Fourth Circuit recognizes the following factors in assessing the standard for fair settlement negotiations: (1) the posture of the case at the time settlement was proposed, (2) the extent of discovery that had been conducted, (3) the circumstances surrounding the negotiations, and (4) the experience of counsel in the area of class action litigation. In re Jiffy Lube Sec. Litig., 927 F.2d 155, 158-59 (4th Cir. 1991).

These factors strongly favor approval of the proposed settlement. The Settlement agreement is the result of ongoing arm's length negotiations since court ordered mediation was

held in October of 2017. The Parties' negotiations were protracted and required multiple lengthy communications. Under the supervision of the mediator, all negotiations were conducted at arm's length and in good faith. The extensive discovery, fact-gathering and motion practice that was conducted prior to the mediation allowed Class Counsel – who are experienced employment discrimination attorneys – to assess the strengths and weaknesses of the claims against Nucor and the benefits of the proposed settlement under the circumstances of this case.

Class Counsel has researched numerous procedural and substantive issues in this complex matter and has spoken to witnesses surrounding the allegations giving rise to this case. Accordingly, counsels' negotiations and judgment that the proposed settlement is in the best interest of the classes satisfies the In re Jiffy Lube Sec. Litig. fairness factors for approval under Fed. R. Civ. P. 23(e).

ii. The relative strength of the parties' cases as well as the uncertainties of litigation on the merits favors settlement.

The strengths and weaknesses of the claims and the defenses support settlement at this stage in litigation. The Supreme Court has cautioned that in reviewing a proposed class settlement, a court should "not decide the merits of the case or resolve unsettled legal questions." Carson v. Am. Brands, Inc., 450 U.S. 79, 88 n.14, 101 S. Ct. 993, 67 L. Ed. 2d 59 (1981). "Because the object of settlement is to avoid, not confront, the determination of contested issues, the approval process should not be converted into an abbreviated trial on the merits." US Airline Pilots Ass'n v. Velez, 2016 U.S. Dist. LEXIS 120714, **15-16 (W.D. N.C. 2016) (citing Flinn v. FMC Corp., 528 F.2d 1169, 1172-73 (4th Cir. 1975)) (noting that the settlement hearing is not "a trial or a rehearsal of the trial"); United States v. North Carolina, 180 F.3d 574, 581 (4th Cir. 1999). Instead, courts have consistently held that the function of a judge reviewing a settlement is to determine whether the proposed settlement is reasonable "without substituting its business judgment for that of counsel, absent evidence of fraud or overreaching." In re Global Crossing

Sec. & ERISA Litig., 225 F.R.D. 436, 455 (S.D.N.Y. 2004) (internal quotation marks and citations omitted). And, "[a]n integral part of the strength of the case on the merits is a consideration of the various risks and costs that accompany continuation of the litigation." Reed, 2016 U.S. Dist. LEXIS 187745 at *21.

The factual and legal issues in this case are complex, as demonstrated by the Parties' years of hard-fought litigation and the terms of the Settlement Agreement itself. Moreover, currently pending before the Court but not yet argued or decided are several significant motions, including Nucor's renewed motion for summary judgment, Nucor's Daubert motion, and Nucor's motion to strike an expert. The decisions on these motions would necessarily have a significant impact on the continued litigation and present substantial potential risks for both Parties.

The various strengths and weaknesses of the parties' claims and defenses strongly favor settlement. As set out above, continued litigation has clear risks, uncertainties, and unproven benefits. The inherent fees and costs associated with extensive litigation and trial will reduce the net amounts available to satisfy claims. Based on the foregoing, the proposed settlement is a reasonable resolution of the dispute between the parties.

Moreover, Plaintiffs could spend significant amounts of time and money preparing for and participating in a drawn-out two-part trial and recover nothing, or significantly less than the relief provided by the proposed settlement. Likewise, Nucor could spend significant amounts of money defending itself in a two-part trial and lose this case. In this circumstance, settlement is preferable to the risks of continued litigation faced by the Parties. The fact that settlement allows both Parties to avoid the risk and expense of further litigation is a factor in support of settlement approval.

Moreover, "victory -- even at the trial stage -- is not a guarantee of ultimate success" given the risks and expense of appeal. In re Milken & Assoc. Sec. Litig., 150 F.R.D. 46, 53 (S.D.N.Y. 1993). Even if the Settlement Class Members succeeded at trial, they would most certainly face a challenging and lengthy appeal. Such an appeal could significantly alter any potential relief awarded at trial and could even eliminate such relief altogether. Moreover, at the very least, an appeal would postpone any recovery or remedy for years and could result in Nucor ultimately paying no damages at all. If Nucor prevails at trial, it would also likely face a lengthy appellate process with an uncertain outcome.

Accordingly, the various strengths and weaknesses of the Parties' claims and defenses strongly favors settlement.

iii. The complexity and expense of the case, the adequacy of the settlement, and the stage of litigation support approving the settlement.

The application of elements three through five set forth in S.C. Nat'l Bank support settlement between the Parties because it demonstrates that the settlement is fair, reasonable and adequate. "[A]n integral part of the strength of the case on the merits is a consideration of the various risks and costs that accompany continuation of the litigation." S.C. Nat'l Bank, 749 F. Supp. at 1426. "The likely duration and associated expenses of continued litigation favor approval of the settlement." Id.

First, the duration, complexity, and expenditures of continued litigation of the claims supports approval of the proposed settlement. This case has been pending more than a decade and has required nearly 100 depositions and the review and production of thousands and thousands of documents by Nucor. Multiple motions have been briefed and argued, including class certification motions that have been appealed to the Fourth Circuit Court of Appeals on two separate occasions. Numerous experts have been retained by both Parties and these experts have each issued lengthy, complex reports. Over the last ten plus years of litigation, both Parties have

expended substantial sums in advance of the prosecution and defense of this case. The ordeal of significant pre-trial motions and other pleadings as well as an extremely lengthy two-part trial and an inevitable appeal by at least one, if not both, Parties will necessarily result in extending the length of this case and significant additional expenses.

Second, the adequacy of the Settlement Agreement when weighed against the risks and expenses of continued litigation and trial favors settlement. The Settlement Class Members sought both monetary and injunctive relief and the proposed settlement provides both forms of relief. The Settlement Agreement provides a monetary fund that is a fair and reasonable compromise of the range of backpay and damages calculated by Plaintiffs' experts. Specifically, the total fund created by Nucor is $22.5 million, with nearly $12.5 million allocated for payments directly to the Settlement Class Members. The process for submitting a Claim Form was not onerous and Settlement Class Members were not required to prove that they suffered any specific amount of damages, or to attempt to estimate the monetary damage they allegedly suffered. Each Settlement Class Member's monetary recovery will be determined according to the information they provided on their claim form and/or information that is otherwise discovered as part of the investigation by class counsel regarding alleged discrimination in promotions and an allegedly racially hostile work environment at Nucor Berkeley. The injunctive relief provided by the Settlement Agreement relates to the challenged promotions practices and the alleged hostile work environment.

Finally, the current stage of litigation is favorable to settlement. If settlement is not approved, substantial additional work and expenses will be expended in the prosecution and defense of Plaintiffs' claims. Where, as here, discovery has been nearly completed, and the parties have had a complete opportunity to develop the facts to permit a reasonable judgment on the possible merits of the case, settlement is proper. See Reed, 2016 U.S. Dist. LEXIS 187745 at

*22-23; Flinn v. F.M.C. Corp., 528 F.2d 1169, 1173 (4th Cir. 1975) cert. denied, 424 U.S. 967 (1976).

Based on the above, the settlement is fair, reasonable and adequate. It satisfies each factor to consider when assessing the propriety of settlement as enunciated in S.C. Nat'l Bank. The settlement is in the Settlement Class Members' best interest.

B. Conclusion

The adequacy of the Settlement Agreement — when weighed against the risks and expenses of continued litigation and an extremely lengthy two-part trial — favors settlement. Therefore, the Court finds that the settlement is a fair, reasonable and adequate resolution of the disputes between the Parties.

Accordingly, the Court hereby provides full and final approval of the proposed Class Action Settlement as set out in the Joint Motion for Class Settlement.

Further, the Court finds that the proposed Class Settlement, as outlined in the Settlement Agreement and Joint Motion for Class Settlement, is fair, adequate, and reasonable, that the notice procedure set out in the Preliminary Order was appropriate and followed by the Parties, and that the Settlement Class meets the requirements of Rule 23(a), 23(b)(1)(B), and 23(b)(3) of the Federal Rules of Civil Procedure.

IV. FINAL APPROVAL OF CLASS COUNSEL FEES AND COSTS AND SERVICE PAYMENTS TO CLASS REPRESENTATIVES

Also before the Court is Plaintiffs' Counsel's Motion to Approve Attorneys' Fees and Expenses Pursuant to The Parties' Settlement Agreement. The Settlement Agreement provides for attorneys' fees and expenses as follows:

> In addition to reimbursement of reasonable expenses, the Settlement also provides for reasonable attorneys' fees for Class Counsel's work investigating the facts, litigating the case for the past fifteen years, negotiating the settlement, and handling all post-settlement disputes and proceedings. Nucor has agreed that it

> will not object to attorneys' fees sought by Class Counsel of up to ten million dollars ($10,000,000).

Settlement Agreement at §5.01 (ECF 606-2); see also Notice of Proposed Settlement Agreement and Hearing at p. 9 (ECF 606-4).

A. Class Counsel's Request for Attorneys' Fees

Plaintiffs' Counsel seeks approval of $10,000,000 in attorneys' fees and $975,699.22 to reimburse for costs and expenses. No objection has been made to the amount of such attorneys' fees set forth in the Notice to the Settlement Class Members. See e.g. Clark v. Experian Info. Solutions, Inc., 2004 U.S. Dist. LEXIS 32063, *29 (D.S.C. 2004) ("Despite this notice, no Class Member has submitted any objection to an award of the fees now sought, which constitute the maximum allowed under the settlement agreements."); Fangman v. Genuine Title, LLC, 2016 U.S. Dist. LEXIS 160434, *23 (D.M.D. 2016)("'[T]he fact that no objections have been filed further suggests that the result achieved is a desirable one.'").

The Court has previously found that the Notice to be sent to the Settlement Class Members "fairly, accurately, and reasonably informs Settlement Class Members of, and allows Settlement Class Members a full and fair opportunity to consider . . . how administrative costs and potential attorneys' fees and incentive payments for the Class Representative will be handled [and] the procedures and deadlines for submitting objections." Order of Preliminary Approval of Settlement Agreement at pp. 2-3 (ECF 607).

Courts in the Fourth Circuit have the discretion to choose a lodestar fee approach or, in the context of common fund settlements, a percentage of the fund. DeLoach v. Philip Morris Cos., Inc., No. 1:00CV01235, 2003 WL 23094907, at *3 (M.D.N.C. Dec.19, 2003). Where the cash portion of the settlement is an amount which would not yield a reasonable fee on a percentage basis, the lodestar method is preferred. Id. Here, Plaintiffs' counsel has requested fees under the lodestar multiplier model and the Court adopts that approach. The Fourth Circuit

next compels district courts to look to the twelve factors outlined in Barber v. Kimbrell's, Inc., 577 F.2d 216, 226 n.28 (4th Cir. 1978), to evaluate the reasonableness of the fees.

1. Time and labor required.

In the seventeen years that this litigation has remained active since the Plaintiffs filed their Charges of racial discrimination with the EEOC in 2001, the Parties have aggressively litigated this case. The Parties conducted both extensive merits and class-based discovery. Numerous depositions including expert witness depositions were taken. The Parties briefed and argued many motions including class certification, three appeals and two Petitions for Certiorari to the United States Supreme Court. The Parties also eventually engaged in settlement negotiations and mediation.

As demonstrated in the Declarations and itemizations of time and expense submitted with the Motion for attorneys' fees and expenses, the Plaintiffs' attorneys and staff in this litigation have accrued $975, 699.22 in out-of-pocket expenses and over twenty thousand hours of time and labor to date. Absent the Parties' Settlement Agreement, the total lodestar would be more than $12,000,000, which does not include any additional hours or expenses that will be incurred post-settlement approval. Notably, Class Counsel will be administering the settlement and are not asking for a separate award for that work. Thus, the time and costs continue to accrue but Plaintiffs' counsel is not requesting additional payment for that work.

2. Novelty and difficulty of the questions involved.

As with most class actions, the propriety of class treatment was contested and presented novel and difficult issues in two different appeals brought by the Plaintiffs and one appeal brought by Nucor under Fed. R. Civ. P. 23(f). See Brown v. Nucor, 785 F.3d 895 (4th Cir. 2015); Brown v. Nucor, 576 F.3d 149 (4th Cir. 2009); cert. denied 559 U.S. 974)(2010). It was only after remand from the second appellate mandate compelling class certification that the

Parties reached the global resolution embodied in the Settlement Agreement and as this case approached a lengthy two-part trial on the merits.

3. The skill that is required to perform the legal services properly.

These proceedings required skilled counsel to represent the class interests. The law firms involved have the experience and resources to pursue such litigation and Class Counsel handled this litigation professionally. Nucor, meanwhile, was represented by several leading law firms from around the United States, including one of South Carolina's leading law firms with considerable expertise in complex litigation and attorneys with substantial knowledge about class action law. The skill required by Class Counsel here is reflected in part by the quality of opposing counsel. See Smith v. Krispy Kreme Doughnut Corp., No. 1:05CV00187, 2007 WL 119157, at *2 (M.D.N.C. Jan. 10, 2007) ("Additional skill is required when the opponent is a sophisticated corporation with sophisticated counsel.)." Given the stakes in this litigation, the complexity of legal questions, and the results obtained for the class, Class Counsel have demonstrated an exceptional level of skill. See also In re King Res. Co. Sec. Litig., 420 F. Supp. 610, 635–36 (D. Colo. 1976) (defense counsel's reputation considered in determining fee award as their stature reflects challenges faced by plaintiffs' attorneys).

4. The attorneys' opportunity costs in pressing the litigation.

The prosecuting law firms in this litigation, including Class Counsel, have incurred an immense amount of time, labor and expense during the seventeen years that this case has been litigated administratively and in this Court. Class Counsel also had to spend substantial monies to finance this litigation in an amount close to a million dollars that could not be invested in other cases.

5. Customary fee.

Class Counsel's fee request here correlates with the lodestar, i.e., the time and labor actually invested in the case. The requested fee amounts to an effective hourly rate of $515 per hour, which is substantially less than the normal non-contingent hourly rate typically billed and awarded to the principal attorneys for less risky and difficult work. As shown in the Declarations, the Johnson factors support much greater hourly rates based on the special demands and extraordinary risks and delay in payment that were encountered in this case. See Whatley Decl. ($650 to $850 or more per hour for non-contingent work); Edw. Bennett Decl. ($650 per hour for non-contingent legal services); Derfner Decl. ($600 to $650 per hour for non-contingent work); Wiggins Decl. ($650 to $850 or more per hour for non-contingent services). The Court finds that the hourly rates are reasonable for the reasons set forth in such Declarations.

The amount of fee allowed by the Parties' Settlement Agreement satisfies the standards for approval in light of the fact that it is less than the lodestar fee that would be reasonable pursuant to the Johnson factors that the Fourth Circuit and this Court apply in determining a reasonable fee. See Reed v. Big Water Resorts, LLC, 2016 U.S. Dist. LEXIS 187745, **24-25, 27 (D.S.C. 2016) ("Class Counsel's fee request here correlates with the lodestar, i.e., the time actually invested in the case."). As shown in the Plaintiffs' Declarations, although the requested fee is limited to the $10,000,000 referenced in the parties' Settlement Agreement, the lodestar fee that would be reasonable under the Johnson factors is substantially more than that amount based on the special risks, skills and expertise, difficulties, persistence and amount of work demanded by the circumstances of this case. Each of the twelve Johnson factors support an amount of fee much greater than that contemplated by the Settlement Agreement and Notice to the Settlement Class Members. Id. In the absence of the Parties' Settlement Agreement, the lodestar would be greater than $12,000,000 without a multiplier premium or fractional risk-

adjustment payment for the contingent risk in this case. Class Counsel received no hourly payments or any other compensation from the Class Representatives. "Class Counsel undertook enormous obligations and responsibilities in this litigation and produced a significant result. Without these efforts, it is highly unlikely that the class could have obtained any relief whatsoever." Reed v. Big Water Resort, 2016 U.S. Dist. LEXIS 187745 at *30.

6. The contingent nature of the matter/the attorneys' expectations at the outset of the litigation.

Class Counsel understood from the outset of this litigation that there would be no attorneys' fee if there were no recovery. "In complex and multi-year class action cases, the risks of litigation are immense and the risk of receiving little or no recovery is a major factor in awarding attorney's fees." Savani v. URS Prof'l Solutions LLC, C/A No. 1:06- cv-02805-JMC, 2014 WL 172503, at *5 (D.S.C. Jan. 15, 2014) (citing Phillips v. Crown Cent. Petroleum Corp., 426 F. Supp. 1156, 1170 (D. Md. 1977)). Class Counsel worked for seventeen years with no payment on this litigation and at great risk of taking no payment at all despite many thousands of hours of accumulating time. Moreover, Class Counsel could have lost their entire investment in out-of-pocket expenses, an amount that now totals $975,699.22.

There was a significant risk of no recovery in this litigation. Even once Plaintiffs had prevailed on class certification, no judgment or settlement could be secured until many additional steps, including dispositive motions, Daubert motions, trial, and potentially more appeals, had been completed. Class Counsel was aware that any one of a number of rulings could undermine the litigation and could result in Class Counsel taking nothing for their efforts. "Such 'burdens are relevant circumstances' that support the requested award." Savani, 2014 WL 172503, at *5 (quoting Torrisi v. Tucson Elec. Power Co., 83 F.3d 1370, 1377 (9th Cir. 1993)).

7. The time limitations imposed by the client or circumstances.

This action necessitated extensive efforts in briefing, class discovery, merits discovery, three appeals, and eventual settlement negotiations and administration. Because these actions were filed in federal court, "there have been regular deadlines imposed by the Federal Rules of Civil Procedure and the local rules of court. In this regard, priority work that delays the lawyer's other work is entitled to some premium." Savani, 2014 WL 172503, at *6 (internal quotations omitted). It appears that Class Counsel coordinated their efforts efficiently to obtain the best possible result for the class in an appropriate amount of time given the unique circumstances of this case.

8. The amount in controversy and the amount obtained.

"[T]he extent of the relief obtained by the plaintiff [is] particularly important when calculating reasonable fees, and Barber requires district courts to weigh the amount in controversy to the results obtained before deciding upon a reasonable fee." Nigh v. Koons Buick Pontiac GMC, Inc., 478 F.3d 183, 190 (4th Cir. 2007) (internal quotations and citations omitted). Here, Plaintiffs sought and obtained fair, adequate, and reasonable back-pay, damages and injunctive relief as part of the settlement. Given the relatively small size of the class, Nucor is funding a Settlement Fund that will lead to average payments of around $100,000 to the Settlement Class Members who have submitted valid claims pursuant to the Settlement Agreement. Given that Nucor had significant defenses and is providing injunctive relief in addition to the cash settlement, the Settlement Agreement provides fair, adequate, and reasonable results to the class.

Class Counsel undertook enormous obligations and responsibilities in this litigation. Without these efforts, it is highly unlikely that the class could have obtained any relief whatsoever.

9. The experience, reputation and ability of counsel.

Class Counsel consists of firms with expertise in complex litigation and with a history of success in difficult litigation. Class Counsel's reputation and experience in litigating complex cases assisted the class in achieving the results obtained here.

10. The undesirability of the case.

As pointed out in the Declarations before the Court, thís litigation was undesirable for many reasons. Ordinarily, it is not uncommon for class actions to attract additional law firms seeking to be brought into the litigation. Such activity did not occur here. No other law firm took on this case, nor attempted to represent any of the class members in pursuing claims.

11. Nature and length of the professional relationship.[1]

No discount in fees or hourly rates for regular or future business applies here because Class Counsel had no preexisting relationship with any of the Class Representatives and no expectation of any significant future business. Class Counsel, however, worked closely with these Class Representatives throughout the litigation. The Class Representatives have ably assisted Class Counsel in the pursuit of the claims. There is no reason to suggest that the Class Representatives are dissatisfied with the representation they received here.

12. Attorneys' fees awarded in similar cases.

Because Class Counsel's fee request is concentrated on actual time rather than a percentage of the fund, reference to "similar cases"[2] lacks substantial meaning other than by

[1] This factor arguably has no application in connection to class action litigation. See In re Catfish Antitrust Litig., 939 F. Supp. 493, 502 (N.D. Miss. 1996).

[2] Even though Class Counsel is requesting a fee on a lodestar as opposed to a percentage of the fund analysis, it should be noted that the request focusing solely on the cash value of the settlement is 45% of the value which is in line with multiplier and common fund percentages in other cases. See Kidrick v. ABC Television & Appliance Rental, Inc., Docket No. 97–cv– 0069, 1999 WL 1027050, at *2 (N.D. W.Va. May 12, 1999) (noting that use of a percentage method of calculating attorneys' fees is favored in class action settlements where there is a common fund, and that awards of 30%, 35%, and even 50% have been held reasonable); Anselmo v. West

reference to the multiplier assessment that immediately follows. This is especially true because Class Counsel is going to be administering the settlement and is not seeking additional funds for that process.

Furthermore, the requested fee is reasonable when viewed in terms of a lodestar cross-check, i.e., a determination of whether the plaintiff's attorney seeks a fee that can be viewed as reasonable with a multiplier on the incurred time and labor. Using this approach, Class Counsel's request falls well within the range of reasonable.

Class Counsel's fee is reasonable when compared to the multiplier fee that would be justified in this case for the special skills, risks and other difficulties encountered by Class Counsel in this case. This is especially true here as the lodestar will continue to decrease because Class Counsel will have additional future time to be incurred including time administering the Settlement Agreement of the Parties, which could support the imposition of a multiplier. "Courts have generally held that lodestar multipliers falling between 2 and 4.5 demonstrate a reasonable attorneys' fee." Singleton v. Domino's Pizza, LLC, 976 F. Supp. 2d 665, 689 (D. Md. 2013) (citations omitted).

Even if the amount of time and labor did not reach the $10,000,000 referenced in the Parties' Settlement Agreement, the requested fee would be reasonable and deserving of a lodestar enhancement. Class Counsel pressed forward here for many years in an environment of uncertainty with considerable risk. A multiplier enhancement, which is subject to reduction as other work is performed, would be reasonable under the facts of this case and therefore the requested $10,000,000 fee is reasonable under the lodestar cross-check.

Paces Hotel Grp., LLC, 2012 WL 586887, *3-4 (D.S.C. Nov. 19, 2012) ("The approximate 33% for fees provided here is reasonable in light of all pertinent factors, including precedent and beneficial results obtained.

B. Plaintiffs' Counsel's Cost Request

"Costs that are 'reasonable in nature and amount, may be reimbursed from the common fund.'" Kay Co. v. Equitable Production Co., F. Supp. 2d 455 at 471 (S.D. W. Va. 2010) (citations omitted). Costs should "reflect a reasonable amount of expenditures for a case of [its] magnitude," Strang v. JHM Mortg. Secs. Ltd. P'ship, 890 F.Supp. 499, 503 (E.D. Va. 1995), and also "bear a reasonable relationship to the time and effort expended and the result achieved." In re Microstrategy Securities Litigation, 172 F. Supp. 2d 778 at 791 (E.D. Va. 2001). Plaintiffs' Counsel seeks reimbursement for costs in the amount of $975,699.22, which is less than the amount that will be actually incurred because it does not take into account future costs that Plaintiffs' counsel will incur in administering, monitoring and finalizing the settlement. The expenditures are supported by the record and are reasonable in light of the depth, breadth, and longevity of this litigation. A substantial portion of these costs are related to payments to the experts retained by Plaintiffs, all of whom presented detailed reports, and who were deposed. In addition, Plaintiffs' Counsel also had to pay the day-to-day costs of over seventeen years of litigation, including numerous depositions. Given the length and depth of the litigation, the Court finds that Plaintiffs' Counsel's request for reimbursement of costs is reasonable and awards Plaintiffs' Counsel reimbursement for those costs in the amount of $975,699.22.

C. Request for Service Payments

Plaintiffs' Counsel seek (and Nucor has agreed not to object to) service payments of $40,000 for each individual Class Representative. Service payment awards are routinely approved in class actions to encourage socially beneficial litigation by compensating named plaintiffs for their expenses on travel and other incidental costs, as well as their personal time spent advancing the litigation on behalf of the class and for any personal risk they undertook. Kay, F. Supp. 2d 455, 472 (S.D.W. Va. 2010). Serving as a class representative is a burdensome

task, and, without class representatives, the entire class would receive nothing. Id. The Class Representatives in this action provided substantial aid to Plaintiffs' Counsel, including deposition testimony that advanced the interests of all Settlement Class Members and attended the mediation.

Based on the foregoing, Plaintiffs' Counsel seeks incentive fee payments of $40,000.00 each for Quinton Brown, Alvin Simmons, Sheldon Singletary, Gerald White, Jason Guy, and Jacob Ravenell. Given the aid and assistance provided by each, the Court finds the service payment request reasonable.

VI. CONCLUSION

Based on the foregoing and after notice to the Settlement Class Members was provided in compliance with the notice plan, the Court hereby Orders and Directs:

a. The Court gives final approval of the Class Action Settlement as set out in the Class Action Settlement Agreement;

b. The Court awards Class Counsel attorney fees of $10,000,000.00 and reimbursement of costs in the amount of $975,699.22;

c. The Court approves service payments of $40,000.00 each to Quinton Brown, Alvin Simmons, Sheldon Singletary, Gerald White, Jason Guy, and Jacob Ravenell;

d. Within 3 days of Nucor funding the Settlement Fund set forth in Section 3.01 of the Settlement Agreement, the Court will dismiss this Action, with prejudice, without costs to any Party, except as expressly provided for in the Settlement Agreement;

e. Within 3 days of Nucor funding the Settlement Fund set forth in Section 3.01 of the Settlement Agreement, the Court will dismiss the action entitled Conyers, et

al. v. Nucor Corporation, et al., Case No. 2:12-cv-3478-CWH-BM, with prejudice, without costs to any Party

f. Direct the Clerk of the Court to enter Final Judgment forthwith; and,

g. Retain jurisdiction of all matters relating to the interpretation, administration, implementation, effectuation, and enforcement of the Settlement.

AND IT IS SO ORDERED.

DAVID C. NORTON
UNITED STATES DISTRICT JUDGE

February 22, 2018
Charleston, South Carolina