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United States District Court, E.D. New York.

Dorothy SHEPPARD, Robert W. Berry, Irma J. Mushatt, James M. Carter, Harold McKinzie, Leonard B. Middleton, Derick C. Hewitt, and James W. Austin, individually and on behalf of all others similarly situated, Plaintiffs,
v.
CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., Defendant.

No. 94–CV–0403(JG). | Aug. 1, 2002.

Employees and former employees brought class action against employer, alleging race discrimination in violation of Title VII. The District Court, 2000 WL 33313540, denied parties' first proposed settlement. After renegotiating incentive awards to named plaintiffs, parties moved for approval of second proposed settlement. The District Court, Gleeson, J., held that: (1) certification of class was proper for settlement of action; (2) proposed settlement of $6.745 million was fair, adequate, and reasonable; (3) six named plaintiffs were entitled to incentive payments ranging from $8,333 to $29,167; and (4) class counsel was entitled to $1,797,500 in fees and $295,637 in costs.

Motion granted.

Attorneys and Law Firms

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Mary Schuette, Larry Carbone, Jeanmarie Schieler, Consolidated Edison Company of New York, Inc., New York, New York, and Kenneth Standard, Morgan, Lewis & Bockius LLP, New York, New York, for Consolidated Edison Company of New York, Inc.

Opinion

MEMORANDUM AND ORDER

GLEESON, J.

***1** In this employment discrimination action, a putative class of approximately 2,406 African Americans currently or formerly employed by Consolidated Edison Company of New York, Inc. ("Con Ed"), alleges that Con Ed discriminated against them on the basis of race, in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq*.[1] This opinion concerns the parties' second attempt at settling the case. By Memorandum and Order dated December 21, 2000, familiarity with which is assumed, I rejected their first proposed settlement agreement ("First Proposal") on the ground that the incentive awards for the named plaintiffs were excessive, resulting in a settlement that was unfair to the absent class members. After renegotiating the incentive awards and other terms of the First Proposal, the parties have submitted a proposed Amended Stipulation of Settlement ("Settlement"). As described below, I approve the Settlement pursuant to Rule 23(e) of the Federal Rules of Civil Procedure. Incentive awards are allotted in amounts that, in my judgment, adequately compensate the named plaintiffs for their special roles in this litigation.

[1] The proposed class includes "present, as well as former, black and/or African–American employees of CON ED, who are either high level union employees or lower to middle level management employees, qualified in terms of seniority and experience, who have received good performance reviews, and were denied promotion or transfer because of their race and/or color." Complaint ¶ 10. In late 1998, plaintiffs moved for class certification, which on September 9, 1999, Magistrate Judge Joan M. Azrack recommended that I grant. Since that time, and at the parties' request, I have held my decision on that motion in abeyance to afford the parties an opportunity to settle the case.

For reasons discussed below, I now certify a class for settlement purposes only ("Settlement Class") to include "[b]lack employees, numbering approximately 2,406, who were actively employed by CECONY [Con Ed Company of New York] in Upper-level Union or in Management Positions at any time during the period from January 2, 1984 to March 31, 1997."

BACKGROUND

A. *The First Proposal*

As detailed in my Memorandum and Order of December 21, 2000, the First Proposal provided for, *inter alia,* a fund of $4.5 million to be distributed among the Settlement Class based on the relative likelihood that each class member was discriminated against by Con Ed. Each class member was to receive a share of the $4.5 million

based on a distribution study conducted by Dr. Bernard R. Siskin, the Senior Vice President of the Center for Forensic Studies. Dr. Siskin analyzed the number of promotional shortfalls at Con Ed and the relative likelihood that each class member suffered discrimination there. The class members' awards ranged from a low of $556 to a high of $3,564, with a mean of $1,833. The named plaintiffs were each to receive an additional $400,000 as incentive awards. Class counsel requested $1,797,500 in fees and $262,500 in costs. Moreover, various forms of non-monetary relief were provided.

B. ***The Settlement***

The Settlement increases the class fund from $4.5 million to $6.745 million. *See* Settlement § X(A). Class members' awards range from a low of $556 to a high of $21,372, with a mean of $2,767. *See* Affidavit of Bernard R. Siskin dated February 19, 2002 ("Siskin Aff.") ¶ 19.

Incentive awards under the Settlement are no longer fixed at an exorbitant level. Rather, their allocation is left in my discretion with the following amounts set as caps:[2] (1) James W. Austin, $175,000; (2) Robert W. Berry, $150,000; (3) James M. Carter, $115,000; (4) Harold McKinzie, $50,000; (5) Leonard B. Middleton, $150,000; and (6) Irma J. Mushatt, $75,000.[3] *See* Settlement § XII.

[2] Two of the named plaintiffs, Dorothy Sheppard and Derick C. Hewitt, have exercised their right to opt out under the Settlement.

[3] Additionally, Robert W. Berry and Harold McKinzie will receive promotions with accompanying salary increases. *See* Settlement § XII.

Like the First Proposal, the Settlement provides for significant injunctive relief, pursuant to which Con Ed will: (1) form a Human Resource Committee; (2) post most management job openings companywide; (3) adhere to EEO policies in management performance reviews; (4) provide career counseling services to employees who indicate that they are interested in promotions; (5) provide day-long conflict/diversity training to all employees; and (6) notify employees of significant organization or personnel changes. *See* Settlement § XIV. Con Ed estimates that these changes will cost $5 million to implement. *See* Affidavit of Geraldine Eure dated Oct. 16, 2000 ("Eure Aff.") ¶ 8.

***2** Finally, class counsel requests $1,797,500 in fees and $295,637 in costs. *See* Settlement § XI, XII.

C. ***The Procedural History of the New Proposed Settlement***

On October 16, 2001, I preliminarily approved the Settlement. Thereafter, each class member received notice summarizing the overall Settlement, informing the class member of his or her award, and stating the maximum incentive awards that the named plaintiffs were eligible to receive. On February 26, 2002, I held a fairness hearing at which only four objectors appeared.[4]

[4] The substance of each objection is discussed *infra.*

DISCUSSION

A. ***The Settlement Class***

[1] The use of a settlement class allows the parties to concede, for purposes of settlement negotiations, the propriety of a class action. It also allows the court to postpone formal certification of the class until after settlement negotiations have ended. The Supreme Court has expressly approved the use of this device. *See Amchem Prods., Inc. v. Windsor,* 521 U.S. 591, 619, 117 S.Ct. 2231, 138 L.Ed.2d 689 (1997) ("the 'settlement only' class has become a stock device").

Settlement classes can be certified only if all of the requirements for class certification under Rule 23 are met. *See id.* When considering the propriety of a settlement class, the fact of settlement is "relevant to class certification" and compels "heightened" attention to the requirements "designed to protect absentees by blocking unwarranted or overbroad class definitions." *Id.* Rule 23(a) specifies the following requirements for bringing a class action:

> (1) the class [must be] so numerous that joinder of all members is impractical, (2) there [must be] questions of law or fact common to the class, (3) the claims or defenses of the representative parties [must be] typical of the claims or defenses of the class, and (4) the representative parties must fairly and adequately protect the interests of the class.

Fed.R.Civ.P. 23(a). In addition, where, as here, the plaintiffs allege that the class action is maintainable under Rule 23(b)(3) (*see* Settlement § VI), they must show that common questions "predominate over any questions affecting only individual members" and that a class action

is "superior to other available methods for fair and efficient adjudication of the controversy." Fed.R.Civ.P. 23(b)(3).

The Settlement Class in this case is defined as follows: "[b]lack employees, numbering approximately 2,406, who were actively employed by CECONY [Con Ed Company of New York] in Upper-level Union or in Management Positions at any time during the period from January 2, 1984 to March 31, 1997." Settlement § VI. I am satisfied that (i) this Settlement Class meets the four threshold requirements of Rule 23(a); (ii) questions of law or fact common to the members of the class predominate over any questions affecting only individual members; and (iii) a class action is superior to other available methods for the fair and efficient adjudication of the controversy. Therefore, I find that final certification of the Settlement Class is proper.

B. ***Standard for Approving a Proposed Settlement***

***3** Pursuant to Rule 23(e), any settlement or dismissal of a class action requires court approval. In order to approve such a settlement, the court must determine that the settlement is "fair, adequate, and reasonable, and not a product of collusion." *Joel A. v. Giuliani,* 218 F.3d 132, 138 (2d Cir.2000). In so doing, the court must "eschew any rubber stamp approval" yet simultaneously "stop short of the detailed and thorough investigation that it would take it if were actually trying the case." *City of Detroit v. Grinnell Corp.,* 495 F.2d 448, 462 (2d Cir.1974); *abrogated on other grounds by Goldberger v. Integrated Res., Inc.,* 209 F.3d 43 (2d Cir.2000). Judicial discretion should be exercised in light of the general policy favoring settlement. *See Weinberger v. Kendrick,* 698 F.2d 61, 73 (2d Cir.1982).

Fairness is evaluated by examining (1) the negotiations that led up to the settlement, and (2) the substantive terms of the settlement. *See In re Holocaust Victim Assets Litig.,* 105 F.Supp.2d 139, 145 (E.D.N.Y.2000). "The [negotiation] process must be examined 'in light of the experience of counsel, the vigor with which the case was prosecuted, and the coercion or collusion that may have marred the negotiations themselves." ' *Id.* at 145–46 (quoting *Malchman v. Davis,* 706 F.2d 426, 433 (2d Cir.1983)). Factors relevant to the substantive fairness of a proposed settlement include: (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 defendant 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. *See Grinnell,* 495 F.2d at 463.

1. ***Procedural Fairness***

[2] I find that the Settlement is procedurally fair because (i) it was the product of arms-length negotiations, and (ii) class counsel are skilled and fully informed by sufficient discovery. The process by which the parties negotiated the Settlement demonstrates its fairness to class members. To calculate the monetary relief for class members, the parties relied on the expertise of Dr. Siskin, a nationally recognized labor economist. Next, the parties negotiated the injunctive, non-monetary relief to be provided to the class. This process involved numerous meetings, some of which included discussions with Richard Cowie, then Vice President of Human Resources at Con Ed. Finally, the parties negotiated attorneys' fees. In total, prior to their submission of the First Proposal, the parties had more than seventy-five meetings and telephone conferences concerning their settlement negotiations.

***4** After I declined to approve the First Proposal, the parties continued their negotiations, assisted on certain occasions by Magistrate Judge Joan M. Azrack and on other occasions by me. Ultimately, they agreed that I would make the final determination regarding incentive awards to the named plaintiffs, subject only to maximum awards specified in the Settlement.

The extensive discovery in the case adequately informed the parties of the merits of their cases. Discovery involved a voluminous document exchange, more than thirty depositions, the retention of expert witnesses, and the litigation of numerous discovery disputes. *See* Affidavit of Kenneth G. Standard dated Oct. 16, 2000 ("Standard Aff.") ¶ 2–5. Considering the good-faith negotiation process and the sufficiency of discovery, I conclude that the Settlement is "fair, adequate, and reasonable, and not a product of collusion." *Joel A. Giuliani,* 218 F.3d at 138.

2. ***Substantive Fairness***

a. ***The complexity, expense and likely duration of the litigation***

Because this case involves complex factual and legal issues, a trial on the merits would consume considerable time and resources. Dueling experts and sophisticated statistical models would no doubt add to the complexity of the proof. A jury's verdict would likely be appealed, thereby extending the duration of the litigation.

b. ***The reaction of the class to the settlement***

Out of a class of approximately 2,406 people, only twenty-eight (constituting approximately one percent of the class) opted out of the Settlement and only four class members objected to the Settlement.[5]

[5] In addition, class member Gloria Harduin, who was awarded $2,103, wrote a letter to the Court dated Dec. 18, 2001, inquiring "why the amounts are so different." Her inquiry did not constitute an actual objection to the Settlement.

Quincy Mortimer complains that the "amounts (for named class members versus unnamed class members that) are uneven," do not "fairly compensate for the duration of the alleged discrimination," and result in "unfair awards for the unnamed class members." Objection to Proposed Settlement on Behalf of Quincy Mortimer by Scott Gale, Esq. at 2. Mortimer notes that named plaintiff Robert W. Berry could receive an incentive award of up to $150,000, a promotion and a 10% salary increase.[6] In comparison, Mortimer, who works in the same unit as Berry, and, like Berry, has been at Con Ed for 32 years, will receive little more than $3,000 as compensation. I agree that an incentive award to Berry in the amount of $150,000 would be unfair to unnamed class members, such as Mortimer. As described below, I have limited the incentive awards to amounts that I believe fairly compensate the named plaintiffs and are not disproportionate to the recovery of absent class members.

[6] Berry is also to receive $3,459 as his class share. *See* Affirmation of Larry Carbone dated Feb. 21, 2002 ("Carbone Aff.") ¶ 4.

The remaining objections relate to the size of awards to the class members.[7] The small number of objections weighs in favor of my approving the Settlement. *See, e.g., Marisol v. Giuliani,* 185 F.R.D. 152, 163 (S.D.N.Y.1999) ("The Court views the small number of comments from a plaintiff class of over 100,000 children as evidence of the Settlement Agreement's fairness reasonableness, and adequacy."); *In re Warner Communications Secs. Litig.,* 618 F.Supp. 735, 746 (S.D.N.Y.1985) (noting small number of objections and opt-outs in approving settlement); *see also Stoetzner v. U.S. Steel Corp.,* 897 F.2d 115, 118–19 (3d Cir.1990) (twenty-nine objections out of 281 class members "strongly favors settlement"). Moreover, in light of Dr. Siskin's well-analyzed distribution study, I am not persuaded by the substance of the objections.

[7] Renaldo Clark objects to the $6.745 million class payment because he believes that it does not include sufficient compensatory and punitive damages. He proposes $100 million as the appropriate class payment. Glen Williams complains about "the absence of punitive damages for long-term pain and suffering claims by Class Members." Fredrick L. Harris claims that the Settlement is "grossly undervalued." He focuses primarily on his individual claims of discrimination, which are outside of the time frame covered by the Settlement.

c. ***The stage of the proceedings and the amount of discovery completed***

***5** Since the initiation of this litigation nearly ten years ago, the parties have engaged in mediation, extensive discovery, motion practice (including a motion for class certification), and two rounds of protracted settlement negotiations. Thus, by the time the Settlement was achieved, both sides were in a position to make informed judgments about the merits of the case and the Settlement.

d. ***The risks of establishing liability and damages, as well as maintaining the class action through the trial***

A trial in this case would involve significant risks to the plaintiffs, including (1) their ability to prove a pattern or practice of discrimination based on statistical and anecdotal evidence; (2) their ability to overcome various defenses, including the statute of limitations; and (3) their ability to prove damages.

e. ***The ability of the defendant to withstand a greater judgment***

Defendant concedes that it is able to withstand a greater judgment.

f. ***The range of reasonableness of the settlement fund in light of the best possible recovery and the attendant risks of litigation***

Defendants have estimated the cost of implementing the Settlement's non-monetary reforms at $5 million, thereby bringing the total calculable costs to a maximum of approximately $13 million. Dr. Siskin concluded that "[t]he proposed settlement of $6.745 million represents 120.8 % of the expected back pay loss." Siskin Aff. ¶ 16. Moreover, Dr. Siskin's analysis compensates class members for a significant period of time outside the applicable statute of limitations, thereby increasing the back pay by 83%.

I find that the range of reasonableness of the settlement in light of the best possible recovery and all attendant

litigation risks weighs in favor of approving the Settlement.

In sum, I conclude that the Settlement is both procedurally and substantively fair.

3. ***Monetary Recovery By the Named Plaintiffs***

[3] As I stated in my prior opinion, I acknowledge the appropriateness of incentive award payments to class representatives in employment discrimination cases. Such awards are not uncommon and can serve an important function in promoting class action settlements. Courts in this circuit generally make these awards based upon

> the existence of special circumstances including the personal risk (if any) incurred by the plaintiff-applicant in becoming and continuing as a litigant, the time and effort expended by that plaintiff in assisting in the prosecution of the litigation or in bringing to bear added value (e.g., factual expertise), any other burdens sustained by that plaintiff in lending himself or herself to the prosecution of the claim, and, of course, the ultimate recovery.

Roberts v. Texaco, Inc., 979 F.Supp. 185, 200 (S.D.N.Y.1997). Specifically, in the context of employment discrimination cases, class representatives may find their "employment credentials or recommendation ... at risk by reason of [their] having prosecuted the suit." *Id.* (citations omitted). The class representative "lends his or her name and efforts to the prosecution of litigation at some personal peril." *Id.* (citations omitted).

***6** In awarding these payments as part of a settlement, a court must ensure that the named plaintiffs, as fiduciaries to the class, have not been tempted to receive high incentive awards in exchange for accepting suboptimal settlements for absent class members. A particularly suspect arrangement exists where the incentive payments are greatly disproportionate to the recovery set aside for absent class members, as they were under the First Proposal.

In response to those concerns, the parties have jettisoned the across-the-board $400,000 payments to the named plaintiffs, and increased the amount of payments to the class as a whole by nearly fifty percent, raising the total class award from $4.5 million to $6 .745 million. They have further agreed to commit to my discretion the amounts of the incentive awards, subject to specified maximums. The following chart indicates the class payment and the proposed maximum incentive payment for each named plaintiff.

Proposed Incentive Awards

Named Plaintiff	Class Payment	Maximum Incentive Award [8]
1. James W. Austin	$2,365	$175,000
2. Robert Berry	$3,459	$150,000
3. James M. Carter	$2,234	$115,000
4. Harold McKinzie	$4,413	$50,000
5. Leonard Middleton	$10,927	$150,000

6. Irma Mushatt	$2,669	$75,000

FN8. If they had not opted out, Derick Hewitt and Dorothy Sheppard would have been eligible for incentive awards up to $65,000 and $175,000, respectively.

Plaintiffs ask me to award the maximum possible incentive payments. In support of their position, they cite the substantial risks that they took in commencing and pursuing this litigation, as well as the time, effort, and invaluable consultative assistance they provided to class counsel.[9] Defendants agree that incentive awards should compensate the named plaintiffs for their willingness to come forward and allege individual and class claims, and for their special role in advancing the litigation.

[9] A powerful basis for separate awards to named plaintiffs in class action settlements is the need to reimburse them for specific expenses they have incurred, including out-of-pocket costs of asserting the litigation, the use of leave time in order to attend depositions and other such costs. Although I invited plaintiffs' counsel to support the requested payments (at least in part) by providing such information, counsel has declined to provide any.

Although these reasons support an award of incentive payments, I decline to award incentive payments in the extraordinarily high amounts requested. Once again, I find that the amounts sought as incentive awards are grossly disproportionate to the compensation to be paid to the absent class members the plaintiffs seek to represent. In my view, appropriate incentive awards here are one-sixth of the proposed maximum amounts, as specified in the following chart.

Actual Incentive Awards

Named Plaintiff	Maximum Incentive Award	Actual Incentive Award
1. James W. Austin	$175,000	$29,167
2. Robert Berry	$150,000	$25,000
3. James M. Carter	$115,000	$19,167
4. Harold McKinzie	$50,000	$8,333
5. Leonard Middleton	$150,000	$25,000
6. Irma Mushatt	$75,000	$12,500

These awards are generally consistent with the incentive awards granted in plaintiffs' cited authority.[10] *See In re Lease Oil Antitrust Litig.,* 186 F.R.D. 403, 449 (S.D.Texas 1999) (incentive awards ranged from $750 to $10,000); *Roberts v. Texaco,* 979 F.Supp. 185, 205 (S.D.N.Y.1997) (recommending incentive awards of $2,500, $25,000, $50,000, and $85,000; describing the last award as "an upward departure froAugust 1, 2002m cited precedent"); *In re Southern Ohio Corr. Facility,* 175 F.R.D. 270, 277 (S.D.Ohio 1997) (declining to approve proposed incentive award of $25,000; appointing Settlement Master/Trustee to determine appropriate award); *Enterprise Energy Corp. v. Columbia Gas Transmission Corp.,* 137 F.R.D. 240, 251 (S.D.Ohio 1991) (in an estimated $56.65 million settlement, awarding $50,000 incentive awards); *In re Dun & Bradstreet Credit Serv. Customer Litig.,* 130 F.R.D. 366, 373–74 (S.D.Ohio 1990) (in estimated $18 million settlement, incentive awards ranged from $35,000 to $55,000); *Genden v. Merrill Lynch, Pierce, Fenner & Smith,* 700 F.Supp. 208, 210 (S.D.N.Y.1988) (in estimated $4 million settlement, refusing request for $40,170 in incentive awards and granting $20,085 instead); *Green v. Battery Park City Auth.,* 44 Fair Empl. Prac. Cas. (BNA) 623, 627 (S.D.N.Y.1987) (approving incentive award of $4,000); *Lo Re v. Chase Manhattan Corp.,* 19 Fair Empl. Prac. Cas. (BNA) 1366, 1371 (S.D.N.Y.1979) (approving incentive awards of $22,900); *Women's Comm. for Equal Employment Opportunity v. National Broad. Co.,* 76 F.R.D. 173, 180 (S.D.N.Y.1977) (approving incentive awards ranging from $336 to $35,174, yet noting doubts as to their appropriateness). *But see Ingram v. The Coca–Cola Co.,* 200 F.R.D. 685, 694 (N.D.Ga.2001) (approving incentive awards of $303,000, which were nearly eight times greater than the class payments).

[10] According to one study that the plaintiffs cite, the average incentive award payment is between $1,000 and $5,000, which is considerably lower than the results in this case. *See* Sherrie R. Savett, et al., "Consumer Class Actions: Class Certification Issues, Including Ethical Considerations and Counsel Fees and Incentive Award Payments to Named Plaintiffs," 936 PLI/Corp. 321 at 340 (1996) (citing fifty-two cases involving incentive awards payments and noting that the normal range of such awards is $1,000 to $5,000).

***7** I also note that the difference between the highest incentive award, $29,167, and the highest class payment, $21,372, is only $7,795, as opposed to the difference under the First Proposal, which was $396,436 ($400,000 incentive award minus highest class payment of $3,564).

In conclusion, I am satisfied that these incentive awards are appropriate and that they fairly and adequately compensate the named plaintiffs for their special role in this litigation.

4. *Attorneys' Fees*

[4] The Amended Settlement requests $1,797,500 in attorneys' fees and $295,637 in costs. *See* Settlement § XI, XII.[11] In awarding attorneys' fees, the Second Circuit has held that both the "lodestar" method of computation (*i.e.,* hours reasonably expended multiplied by a reasonable hourly rate, plus an enhancement if deemed appropriate) and the "percentage of the fund" method are available to district judges in calculating attorneys' fees in common fund cases. *See Goldberger v. Integrated Res., Inc.,* 209 F.3d 43, 50 (2d Cir.2000). As one court has noted, "[t]he trend, however, in the Second Circuit appears to be the utilization of the percentage method." *Baffa v. Donaldson Lufkin & Jenrette Sec. Corp.,* 96 Civ. 0583, 2002 WL 1315603, at *1 (S.D.N.Y. June 17, 2002) (citing *In re American Bank Note,* 127 F.Supp.2d 418, 431 (S.D.N.Y.2001) ("Although the law in the Circuit has not been uniform, the trend of the district courts in this Circuit is to use the percentage of the fund approach to calculate attorneys' fees.").

[11] The attorneys' fees are the same as in the First Proposal, whereas the costs have increased primarily because of class counsels' consultations with Dr. Siskin.

Traditional criteria in determining a reasonable common fund fee include: (1) the time and labor expended by counsel; (2) the magnitude and complexities of the litigation; (3) the risk of the litigation; (4) the quality of representation; (5) the requested fee in relation to the settlement; and (6) public policy considerations. *See Goldberger,* 209 F.3d at 50. Moreover, the Second Circuit recommends analyzing the documentation of the hours submitted by counsel as a "cross check" on the reasonableness of the requested percentage. *See id.*

The instant Settlement consists of $6.745 million in monetary relief to class members, an estimated $5 million in non-monetary, injunctive relief, $119,167 in incentive awards, and $295,637 in costs. Class counsel's request for $1,797,500 in fees, constitutes approximately 12.9% of the total settlement. These fees are proportionately within the sums allowed in other similar cases. *See, e.g., Ingram,* 200 F.R.D. at 695 (allowing fees that constituted 20% of total cash settlement fund) (citing *Camden I*

Condominium Ass'n, Inc. v. Dunkle, 946 F.2d 768, 775 (11th Cir.1991), which established a 25% recovery as an appropriate benchmark)); *In re Sumitomo Copper Litig.,* 74 F.Supp.2d 393, 400 (S.D.N.Y.1999) (approving attorneys' fee award that constituted 27.5% of total settlement). Furthermore, I am inclined to accept the proposed fee award because it represents a compromise between the parties. *See id.* ("[T]he Court should give substantial weight to a negotiated fee amount ...").

***8** I find the fairness and reasonableness of the fee award to be supported by the complexities of the case, the difficulty in proving promotional discrimination on a class-wide basis, the time devoted to the litigation, and the substantial class recovery. Based on the representations of class counsel as well as class counsels' ability to substantiate the fees and costs to my satisfaction, I approve of the requested fees and costs.

CONCLUSION

For the reasons stated above, the Settlement Class is certified, the Settlement is approved, and all claims against Con Ed are dismissed with prejudice as against those members of the Settlement Class who have not timely exercised their right to be excluded from the Settlement.