

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

KENISHA BRANTLEY and GREG
BRANTLEY, On Behalf of Themselves and
All Others Similarly Situated,

Plaintiffs,

vs.

REPUBLIC MORTGAGE INSURANCE
COMPANY,

Defendant.

CIVIL ACTION NO. 2:04-CV-00805-PMD

**PLAINTIFFS' UNOPPOSED MOTION FOR
ATTORNEYS' FEES AND COSTS**

Class Plaintiffs, through their undersigned counsel, ask this Court to award attorneys' fees of \$460,000.00 and actual litigation costs of up to \$20,000.00, as agreed upon by the parties in the Settlement Agreement, which was preliminarily approved by this Court on December 12, 2006. Pursuant to paragraph 2.24 of the Settlement Agreement, Class Plaintiffs are permitted to request these fees and costs prior to the Final Approval hearing. Defendant does not oppose this request. In addition, the requested fees and costs represent the total request of all counsel in the above styled case.

Class Plaintiffs are filing this motion in connection with the mailing of notice of class settlement to class members. The notice of class settlement will be mailed on February 28, 2007, advising class members that plaintiffs' counsel will ask the Court to award them attorneys' fees of up to \$460,000.00 and actual litigation costs of up to \$20,000.00. Prior to the Final Approval hearing, set for April 25, 2007, at 10:00 a.m., Class Plaintiffs will supplement this motion with a memorandum of law in support.

“The Fourth Circuit has not determined the preferred method of calculating attorneys’ fees where a common fund has been generated on behalf of a class.” *Teague v. Bakker*, 213 F. Supp. 2d 571, 583 (W.D. N.C. 2002). At the trial court’s discretion, either the percentage-of-the-fund method or the lodestar method may be applied. *Id.* However, the Fourth Circuit has noted that the percentage-of-the-fund method is “less cumbersome to apply than the lodestar computation” while also “reducing the incentive for plaintiffs’ attorneys to over-litigate or ‘churn’ cases...” *In re Microstrategy, Inc.*, 172 F. Supp. 2d 778, 787 (E.D. Va. 2001). In common fund cases, the trend “has been toward use of the percentage method.” *Id.*

[C]ourts have become increasingly critical of the lodestar method, which requires scrutiny of Class Counsel’s billing practices – a time consuming process – whereas the percentage method is more akin to the common litigation practice of setting contingency fees based on a percentage of the recovery.

Goldenberg v. Marriott PLP Corp., 33 F. Supp. 2d 434, 437 (D. Md. 1998). “[T]he percentage method is more efficient and less burdensome than the traditional lodestar method, and offers a more reasonable measure of compensation for common fund cases.” *Id.* at 438 (citing *Strang v. JHM Mortgage Sec. Ltd. Partnership*, 890 F. Supp. 499, 502 (E.D. Va. 1995)). Where a defendant challenges the appropriateness of applying the percentage-of-the-fund method, this Court may compare the resulting fees under both methods of calculation. *Edmonds v. U.S.*, 658 F. Supp. 1126, 1129 (D. S.C. 1987).

“Under the lodestar method of calculating attorneys’ fee awards in common fund cases, the trial court must first determine the hours reasonably expended by counsel that created, protected, or preserved the fund.” *In re Microstrategy, Inc.*, at 786. “Then, the number of compensable hours is multiplied by a reasonable hourly rate for the attorneys’ services to

produce a lodestar figure.” *Id.* Following an assessment of factors, including “the nature of the case, the market for such legal services, and the result achieved,” the court may increase or decrease the lodestar amount. *Id.* Finally, there is a “‘strong presumption’ that the lodestar represents the ‘reasonable fee.’” *City of Burlington v. Dague*, 505 U.S. 557, 561 (1992). An individual seeking a fee greater than the lodestar bears “the burden of showing that ‘such an adjustment is *necessary* to the determination of a reasonable fee.’” *Id.* (citing *Blum v. Stenson*, 465 U.S. 886, 898 (1984)).

Under the percentage-of-the-fund method, the attorneys’ fee does not depend on actual hourly rates and billable hours; rather it is “based on a percentage of the common fund, with the precise percentage selected by the trial court with reference to essentially the same case-specific factors used to adjust, or determine a multiplier for, a lodestar.” *In re Microstrategy, Inc.* at 786-87. When applying the percentage method, “‘the court simply awards the attorneys a percentage of the fund sufficient to provide plaintiffs’ attorneys with a reasonable fee.’” *Teague* at 582 (citing *In re Washington Public Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1294 n. 2 (9th Cir. 1994)). The Fourth Circuit has established that “[a]n award of fees in the range of 30% of the fund has been held to be reasonable.” *Kidrick v. ABC Television & Appliance Rental*, No. 3:97CV69, 1999 WL 1027050, at *2 (N.D. W. Va. 1999). Notably, an award totaling 35% of the common fund was previously approved in the Fourth District and “[f]ees as high as 50% of the fund have been awarded.” *Id.* (citing *Camden I Condominium Ass’n, Inc. v. Dunkle*, 946 F.2d 768, 774-775 (11th Cir. 1991)).

The total amounts of fees and costs requested by Class Plaintiffs in this case are comparable to those resulting from the use of a standard multiplier under the lodestar method. In their forthcoming memorandum of law supplementing this motion, Class Plaintiffs will establish

that the total amounts of fees and costs requested herein are reasonable in consideration of the actual hours spent on the case.

As noted above, this Motion for Award of Attorneys' Fees and Costs will be supplemented by undersigned counsel with a forthcoming memorandum of law in support of the request.

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**ORDER GRANTING PLAINTIFFS'
UNOPPOSED MOTION FOR
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This matter is before the Court upon Plaintiffs' Unopposed Motion for Attorneys' Fees and Costs. Plaintiffs' motion is hereby **GRANTED**.