

STATE OF SOUTH CAROLINA)
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 COUNTY OF HORRY)
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 George M Hearn, Jr., on Behalf of)
 Himself and All other Similarly Situated,)
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 Plaintiffs,)
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 v.)
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 South Carolina Public Service Authority)
 d/b/a Santee Cooper,)
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 Defendant.)
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IN THE COURT OF COMMON PLEAS
 FIFTEENTH JUDICIAL CIRCUIT
BUSINESS COURT
 Civil Action No. 2017-CP-26-05256
**ORDER AWARDING ATTORNEYS' FEES
 AND LITIGATION COSTS AND
 REPRESENTATIVE PLAINTIFF
 INCENTIVE AWARD**

On September 15, 2021, Plaintiff filed an Application for Attorney Fee/Litigation Cost Award and Representative Plaintiff Incentive Award (“Attorneys’ Fee Motion”) as a result of the settlement of this action.¹ The Court, having reviewed the Attorneys’ Fee Motion, the pleadings and other papers on file in this action, and statements of counsel, hereby finds that the Motion should be GRANTED.

NOW, THEREFORE IT IS HEREBY ORDERED THAT:

1. For purposes of this Order, except as otherwise set forth herein, the Court adopts and incorporates the definitions contained in the parties’ Settlement Agreement (identified herein as “Settlement”).
2. On October 7, 2021, the Court held a hearing to consider whether the Settlement is fair, reasonable, and adequate; whether final judgment approving the Settlement and dismissing all claims with prejudice should be entered; whether attorneys’ fees, costs, and expenses and an

¹ On September 15, 2021, Plaintiff additionally filed a Motion for Final Approval for a class action settlement with Defendant, South Carolina Public Service Authority (“Santee Cooper”).

incentive to the Representative Plaintiff should be awarded and, if so, the amount of same; whether the Settlement Class should be certified for settlement purposes; and such other matters as appropriate.²

3. Class Counsel has requested attorneys' fees of thirty-three and one-third percent (33.33%)³ of the Settlement Benefit plus costs no later than fourteen (14) days after the Effective Date of the settlement as stated within the Settlement Agreement.

4. Under the terms of the Settlement Agreement, Santee Cooper agreed to pay \$12,500,000 representing the sum of benefits to be distributed to Class Members, the Attorney Fee/Litigation Cost Award, Incentive Award, Settlement Administration Costs, and any other costs, fees or awards related to the Settlement. The Court finds that attorneys' fees may be awarded from a common fund created by counsel. *See Petition of Crum Johnson v. Williams*, 196 S.C. 528, 531, 14 S.E.2d 21, 23 (1941) (“[A] court exercising equitable jurisdiction may make an allowance of a reasonable fee out of the common fund . . . for an attorney representing a party who, at his own expense, has maintained a suit for the recovery . . . of a common fund . . . in which others are entitled to share.”).

5. The Court has compared the thirty-three and one-third percent (33.33%) award requested against the factors set forth in *Jackson v. Speed*, 326 S.C. 289 (1997), and finds that the requested award is reasonable.

² The present Order pertains only to Plaintiff's Attorneys' Fee Motion. All other Motions will be ruled on separately.

³ Plaintiff's fee request of thirty-three and one-third percent (33.33%) of the Settlement Benefit amounts to \$4,166,666.67 rounded to the nearest one hundredth.

The nature, extent, and difficulty of the case

From the outset this case was difficult, dealing in complex issues related to energy production, construction of a coal-fired energy facility, and rate creation to support the same. In addition, the subject matter complexities were compounded by the nearly 200,000 pages of material obtained in discovery that required individual review and analysis. For these reasons, as well as those stated on the record, the Court finds this factor supports the requested fee.

The time necessarily devoted to the case

Class Counsel have expended over 2,200 attorney hours representing the class. Not included in that number are the hours spent by support staff nor the attorney hours that have and will be spent in the implementation of the settlement. Accordingly, the Court finds that the time necessarily devoted to this case supports the requested fee.

Professional standing of counsel

The Court incorporates this portion of the Attorney Fee Motion by reference. In addition, Class Counsel were met by equally experienced counsel representing Santee Cooper. All counsel were well versed in class action litigation and all litigated this case with tenacity, skill, and perseverance. Accordingly, the Court finds that Class Counsel's experience and the formidable counsel defending the case weigh in favor of approving Class Counsel's fee request.

Contingency of compensation

Class Counsel's representation stemmed from a contingency fee agreement of one-third of the recovery, if any. Consequently, Class Counsel have received no compensation for their work over the nearly four years since this case was filed. On these facts, this factor weighs in favor of Class Counsel's fee request.

Beneficial results obtained

Class Counsel have secured a Settlement Benefit of \$12,500,000 (including attorneys' fees and costs), from which all Class Members will receive a payment of at least five dollars unless they choose to exclude themselves. The Court additionally incorporates this portion of Plaintiff's Attorneys' Fee Motion, and finds that this factor supports Class Counsel's fee request.

Customary legal fees for similar services

The attorneys' fees requested here are consistent with the fees customarily awarded in similar cases. For example, in *Dewitt v. Darlington Cty., S.C.*, the South Carolina District Court noted that "in common fund cases attorney's fee awards generally range anywhere from nineteen percent (19%) to forty-five (45%) of the settlement fund." 2013 WL 6408371, *9 (D.S.C. Dec. 6, 2013) (quoting *Bredbermer v. Liberty Travel, Inc.*, 2011 WL 1344745, *21 (D.N.J. Apr. 8, 2011)). Likewise, a treatise on Class Actions provided that "[e]mpirical studies show that . . . fee awards in class actions average around one-third of the recovery." Alba Conte & Herbert Newberg, *NEWBERG ON CLASS ACTIONS* § 14:6 (4th ed. 2002).

In the Attorneys' Fee Motion, which the Court incorporates here, Class Counsel further included recitation of class action cases where courts have upheld attorneys' fee awards of more than the thirty-three and one-third percent (33.33%) requested here.⁴ Consequently, the Court finds that this factor supports Class Counsel's fee request.

For these reasons, this Court finds Class Counsel's request for thirty-three and one-third percent (33.33%) of the Settlement Benefit Fund is within the range of attorneys' fees awarded in similar cases and is appropriate in this case.

⁴ See Attorneys' Fee Motion, p. 5-6.

6. It is within this Court's discretion to award the Class Representative an incentive award in recognition of his participation of this case. *See Robinson v. Carolina First Bank, NA*, Case No. 7:18-cv-02927-JDA, 2019 WL 2591153, *17 (D.S.C. June 21, 2019) (approving a service award of \$15,000 the court stated, "[a]t the conclusion of a successful class action case, it is common for courts exercising their discretion, to award special compensation to the Class Representative in recognition of the time and effort they have invested for the benefit of the Class."). Accordingly, this Court approves Class Counsel's request for an individual service award of \$10,000 to the Class Representative, George M. Hearn, Jr.

7. The Court has reviewed the litigation expenses request in the Attorneys' Fee Motion, and concludes that they are reasonable. Class Counsel has further updated the Court on additional expenses incurred to date, and concludes that they are reasonable. Accordingly, the request for reimbursement of litigation expenses in the amount of \$53,628.01, as set forth in the Attorneys' Fee Motion, subsequently submitted papers, and argued at the Final Approval Hearing, is granted.

For the foregoing reasons, **IT IS HEREBY ORDERED THAT:**

- Class Counsels' Attorney Fee Motion is **GRANTED** and awards attorneys' fees in the amount of thirty-three and one-third percent (33.33%) of the Settlement Benefit in the amount of \$4,166,666.67.
- Class Counsels' request for an incentive award in the amount of \$10,000 for the Class Representative, George M. Hearn, Jr., is **GRANTED**.
- Class Counsels' request for reimbursement of litigation expenses in the amount of \$53,628.01 is **GRANTED**.

IT IS SO ORDERED.

Dated: _____

By: _____
The Honorable Diane S. Goodstein
Business Court Judge



Horry Common Pleas

Case Caption: George M Hearn Jr VS Public Service Authority South Carolina ,
defendant, et al
Case Number: 2017CP2605256
Type: Order/Attorney Fees

It is so Ordered!

s/Diane S. Goodstein