IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DeWayne Ketchum, Everett L. Richardson, Jr., Robert J. Harris, Barbara A. Nearon, Thomas Long, Theodore I. Busch, Jr., Levette Parish,	:	
	:	Civil Action No. 01-CV-1042
Plaintiffs,	:	
v.	:	
	:	
Sunoco, Inc.	:	CLASS ACTION
Defendant.	:	

MEMORANDUM IN SUPPORT OF THE PARTIES' JOINT MOTION FOR:
(1) FINAL APPROVAL OF A CLASSWIDE SETTLEMENT; AND
(2) ATTORNEYS' FEES AND EXPENSE REIMBURSEMENTS

I. INTRODUCTION

As this Honorable Court is aware, Plaintiffs have reached a settlement with defendant Sunoco, Inc. ("Sunoco") that provides for the payment of $5.5 million as well as non-monetary relief, including a two-year compliance reporting period. Personal notices were mailed to more than 200 Class members on October 21, 2004 and, as of the date of this submission, not a single objection has been received. For this reason and those set forth below, Plaintiffs request that this Court now grant final approval of the Settlement, including an award of attorneys' fees and costs. The proposed order attached hereto does so.

Attached as Exhibit A hereto is the Settlement Agreement that the parties have concluded. Exhibit B is a copy of the notice that was mailed to all Class members. Exhibit C is an affidavit attesting to proof of notice, and Exhibit D is an affidavit summarizing all responses which have been received to Class notice.

II. FACTUAL BACKGROUND

This race discrimination class action was filed by seven current and former African-American employees of defendant Sunoco, Inc.,[1] under Title VII of the Civil Rights Act of 1964, as amended, and the Civil Rights Act of 1866, 42 U.S.C. § 1981, to redress alleged discrimination in Sunoco's compensation and promotion practices and procedures.

Plaintiffs' core allegation was that Sunoco did not give African-American employees fair opportunities to gain upper level managerial positions. Plaintiffs argued that Sunoco's leaders are most often chosen from the sales and production arenas; however, African-Americans were routinely placed in one of three non-production areas: public relations, human resources, or financial analysis, regardless of their inclinations, education and abilities. Plaintiffs attempted to support their allegations with statistical analyses as well as anecdotal evidence. Sunoco has denied Plaintiffs' allegations and not admitted any wrongdoing.

By Opinion and Order dated July 11, 2003 (Exhibit E hereto), this Court certified a class consisting of "all African-American exempt employees of Sunoco, Inc. employed within the Philadelphia area (as previously defined by the parties) at any time [since] January 1, 1996." The Court certified the Class pursuant to Fed. R. Civ. P. 23(b)(2) after Plaintiffs agreed not to seek to resolve claims for pain and suffering attributable to racial harassment on a classwide basis.

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[1] Sunoco is one of the largest independent petroleum refiner-marketers in the United States. Defendant is headquartered in Philadelphia, Pennsylvania and employs approximately 11,000 people. Defendant operates five domestic refineries, sells gasoline under the Sunoco brand through approximately 3,500 retail outlets in 17 states, and sells lubricants and petrochemicals worldwide. Sunoco is comprised of five "business units": (1) Marketing & Logistics, (2) Chemicals, (3) Refining, (4) Coal and Coke, and (5) Shared Services. Six of the seven named plaintiffs work or worked at Sunoco's headquarters in Philadelphia; one works at Sunoco's Philadelphia refinery.

Rather, Plaintiffs sought classwide injunctive and equitable monetary relief (i.e., back pay) to remedy the allegedly unlawful practices from which this lawsuit arose. The Class certified by the Court for litigation purposes is the same Class that will be entitled to monetary recovery if the Court grants final approval to the settlement.

Both before and after the Court's class certification decision, the parties engaged in extensive discovery, including the completion of almost thirty depositions: those of the named plaintiffs and knowledgeable representatives of Sunoco. In addition, thousands of pages of textual documents as well as defendant's electronic database of personnel-related and payroll information were produced and analyzed. Both parties retained experts who analyzed defendant's databases and communicated with each other to ensure that they were working from the same universe of information. Finally, the parties have engaged in exhaustive, careful and arms-length settlement negotiations, often under the supervision of this Honorable Court, to reach the proposed settlement.

The litigation evidence in question showed, among other things, that Sunoco's promotional pool for supervisory and management positions is classwide. Moreover, while each business unit maintains its own human resources manager and personnel, the human resources managers of each business unit report to a single Vice President of Human Resources. Defendant organizes its salaried positions by grades, which ranged from 1 to 28, with 1 being the lowest and 28 being the highest. Middle level management employees generally are at salary grades 8-10. Upper level management employees generally are at grades 11-13. Pursuant to Sunoco's new job posting policy, virtually all openings for positions in grade 13 and below will be posted. Sunoco has also recently revised its procedures for filling managerial positions.

III. SUMMARY OF SETTLEMENT TERMS

As set forth in the Settlement Agreement (Exhibit A hereto), this class action is being settled on the following terms:

1. Approximately $3.59 million shall be distributed to Class members based upon a formula determined by Plaintiffs' experts, Dr. Janice Madden and Dr. Alex Vekker, and approved by Plaintiffs' counsel. The minimum payment to each Class member shall be $2,500 (two thousand five hundred dollars). A maximum payment for each Class member also should be established; we suggest this amount should be $75,000 (seventy-five thousand dollars).[2]

2. Sunoco has agreed to pay approximately $1.5 million to Class Counsel for their fees from the inception of this litigation until the approval of the settlement, if the same is granted by this Court. As a result, Class members' recoveries will not be reduced by counsel fees.

3. Sunoco has agreed to pay approximately $260,000 in special compensatory payments to the Named Plaintiffs (who otherwise will make claims through the same settlement distribution process that will deliver payments to all other members of the Class).[3]

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[2] The proposed maximum payment, if approved, would only affect about ten Class members who occupy the highest grade levels in the Class. At such levels, there are relatively few comparators (non-Class members with comparable education and experience). Thus, back pay estimates at such levels may be unduly influenced by a few, extremely high salaries. Primarily for this reason, Class Counsel submit that a settlement award limit (or "cap") would enhance overall fairness just as does the proposed minimum recovery of $2,500 per Class member.

[3] A portion of the $260,000 in special compensatory payments for Named Plaintiffs was earmarked for Theodore Busch. Contemporaneously herewith, Plaintiffs are submitting a motion to re-designate Mr. Busch from class representative to absent class member. The money that otherwise would have gone to Mr. Busch primarily will be spent, instead, on unanticipated experts expenses that are being incurred as a result of the need to analyze updated Human Resources data produced by Sunoco after the settlement agreement was signed. The Class Representatives were informed that their special compensatory payments may have to be reduced because of increased expenses and the Notice sent to Class members identified $230,000 as the amount that would be

4. Sunoco has agreed to pay approximately $150,000 for the expenses associated with this litigation.

5. Sunoco has denied any wrongdoing.

6. Sunoco has agreed to report to Robert T. Vance, Jr., Esquire on a semi-annual basis with respect to its compliance with the Human Resources programs that have been instituted, including, but not limited to, the April 5, 2004 Job Posting Policy, the Talent Management Program, and the Automated Performance Management Program. Sunoco also has agreed to send to Mr. Vance a copy of its Affirmative Action Plans for the Philadelphia area that are relevant to the claims in the class action.

7. In consideration of the aforementioned undertakings of Sunoco, Plaintiffs agreed to dismiss with prejudice their claims against Sunoco in the class action. Moreover, Plaintiff Everett Richardson will dismiss with prejudice his action against Sunoco. Finally, the Named Plaintiffs will take all necessary actions to dismiss with prejudice any of their charges of discrimination against Sunoco pending with any federal, state, or local agency.

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paid to the Class Representatives.

V. THE PROPOSED SETTLEMENT SHOULD BE APPROVED

A. Applicable Legal Standards

Federal Rule of Civil Procedure 23(e) requires that any settlement or dismissal of a class action be approved by the court.[4] As this Court is well aware, approval of class action settlements involves a two-step process.

First, counsel submit the proposed terms of settlement and the Court makes a preliminary fairness evaluation. If the proposed settlement appears to be procedurally sound and to fall within the range of possible approval, the Court directs that notice be given to the class members of a final fairness hearing. See Fed. R. Civ. P. 23(e).

Second, after analyzing the materials and/or evidence submitted at the fairness hearing and the responses to the class notice, the court decides whether settlement should receive final approval because it is fair, adequate and reasonable. See, e.g., Eichenholtz v. Brennan, 52 F.3d 478, 482 (3d Cir. 1995); Stoetzner v. U.S. Steel Corporation, 897 F.2d 115, 118 (3d Cir. 1990); Walsh v. Great Atlantic and Pacific Tea Co., 726 F.2d 956, 965 (3d Cir. 1983); Girsh v. Jepson, 521 F.2d 153, 157 (3d Cir. 1975).

In making the "fair, adequate and reasonable" determination, the Court must avoid rubber-stamp approval, but it need not conduct the type of detailed investigation that would be required of an attorney trying the case. See, e.g., City of Detroit v. Grinnell Corp., 495 F.2d 448, 462 (2d Cir. 1974). Moreover, judicial discretion should be exercised in light of the general policy

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[4] Before approving a class action settlement, of course, the Court also must be satisfied that the requirements of Fed. R. Civ. P. 23(a) and (b) concerning class certification have been met. In re Prudential Ins. Co. America Sales Litigation, 148 F.3d 283, 307-308 (3d Cir. 1998). In this case, the Court made this determination in certifying the matter as a class action on July 11, 2003.

favoring settlement. See, e.g., Weinberger v. Kendrick, 698 F.2d 61, 73 (2d Cir. 1982). The Third Circuit has stated that "the law favors settlement, particularly in class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation." In re General Motors Corp. Pick-Up Truck Fuel Tank Products Liability Litig., 55 F.3d 768, 784 (3d Cir.), cert. denied, 516 U.S. 824 (1995). In addition, the Supreme Court has stated that "[i]n enacting Title VII, Congress expressed a strong preference for voluntary settlement." Carson v. American Brands, 450 U.S. 79, 88 n.14 (1981).

District Courts, while expected to weigh several factors in deciding whether to approve a class settlement, are afforded broad discretion in making this determination. See, e.g., Girsh, 521 F.2d at 156 n.7. Among the factors which courts consider in determining whether a settlement is fair, reasonable and adequate are the following:

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 and damages;
5. the risks of maintaining the class action through trial;
6. the ability of defendants to withstand a greater judgment; and
7. the range of reasonableness of the settlement in light of the best possible recovery and the risks of litigation.

Girsh, 521 F.2d at 156-57, citing Grinnell, 495 F.2d at 463.

In conjunction with the above-listed Girsh factors, the Court must also consider whether the proposed settlement is a product of detailed arms-length negotiation and whether the

settlement is being recommended by experienced and fair-minded counsel. See, e.g., Lake v. First Nationwide Bank, 900 F. Supp. 726, 732 (E. D. Pa. 1995), citing Austin v. Penna. Dept. of Corrections, 876 F. Supp. 1437, 1472 (E.D. Pa. 1995) ("significant weight should be attributed to 'the belief of experience counsel that settlement is in the best interest of the class'"); In re Coordinated Pretrial Proceedings in Antibiotic Antitrust Actions, 410 F. Supp. 659, 667 (D. Minn. 1974) ("The recommendation of experienced ... counsel is entitled to great weight").[5]

B. The Settlement Is Fair, Adequate and Reasonable

As shown below, the proposed settlement of this action will give a substantial and certain recovery to Plaintiff Class members that is well within a range that responsible and experienced attorneys would recommend in consideration of all pertinent risks of further litigation. Thus, the settlement should be approved. See, e.g., Walsh v. Great Atlantic & Pacific Tea Co., 96 F.R.D. 632, 642 (D.N.J.), aff'd, 726 F.2d 956 (3d Cir. 1983). The application of the Girsh factors leads to the conclusion that the settlement in this case should be approved.

1. Adequate Discovery Has Been Completed

As aforementioned, two of the Girsh factors to be considered in assessing the substantive fairness and adequacy of a class action settlement are (1) the complexity, expense and likely duration of further litigation, and (2) the amount of discovery completed thus far. These factors must be balanced; settlement is favored where it would allow litigants and the Court to avoid a

[5] Recognizing that a settlement represents an exercise of judgment by the negotiating parties, courts have consistently held that the function of a judge reviewing a settlement is neither to rewrite the settlement agreement reached by the parties nor to try the case by resolving issues left unresolved by the settlement. See Bryan v. Pittsburgh Plate Glass Co., 494 F.2d 799, 804 (3d Cir. 1974). Thus, "[t]he temptation to convert a settlement hearing into a full trial on the merits must be resisted." Bell Atlantic Corp. v. Bolger, 2 F.3d 1304, 1315 (3d Cir. 1993).

great amount of delay and cost related to the completion of extensive additional discovery, but a settlement reached too early in the litigation process may suggest that Class Counsel lack sufficient information to determine that the terms of the proposed settlement are fair. Plaintiffs respectfully submit that an appropriate balance between these two factors has been struck in this action, Class Counsel has developed a full understanding of the issues involved after extensive discovery, including nearly thirty depositions, the production and analysis of thousands of pages of textual documents and defendant's electronic database of personnel and payroll information, and analysis of defendant's databases by experts retained by both sides. Additional discovery and a lengthy trial have been avoided, however, which has saved time, expense, and resources for parties, counsel and the Court. Thus, the application of these Girsh factors supports final approval of the settlement.

2. Litigation Poses Significant Risks for Both Plaintiffs and Defendant

In Lachance v. Harrington, 965 F. Supp. 630, 638 n.2 (E.D. Pa. 1997), the court applied several of the Girsh factors together, assessing the risks of establishing liability and damages concurrently with the range of reasonableness of the settlement fund in light of the best possible recovery and all attendant risks of litigation. Generally, employment discrimination is difficult to prove on a classwide basis, and trial court verdicts in favor of plaintiffs in Title VII actions often are overturned. See, e.g., Clermont and Schwab, "How Employment Discrimination Plaintiffs Fare in Federal Court," 1 J. of Empirical Legal Studies 429 (July 2004). Of course, Sunoco also faced significant risks in going forward. A verdict in Plaintiffs' favor that employed the multiple regression analysis initially proposed by Plaintiffs could have led to a significant back pay award.

The comparator analysis used by Plaintiffs' experts to distribute settlement funds seeks to match class members with Caucasian exempt employees at Sunoco to whom they are comparable

primarily in terms of education and experience.[6] Although the class period begins for purposes of classwide injunctive relief in 1996, there are no individual monetary rewards attributable to work before 1999 (or after 2003). However, Class members who only worked either before 1999 or after 2003, will receive $2,500 – the same minimum award given to those Class members who do not appear to have compensable losses based on the strict comparator methodology. Minimum ($2,500) awards also are being paid to any Class member who signed a general release of all claims in exchange for an enhanced severance package. Co-lead counsel submit that minimum awards are appropriate because, inter alia, the Class members in question may have been entitled to recover had the multiple regression analysis, which was originally proposed by Plaintiffs' experts, been employed. Co-lead Counsel also propose the use of a maximum award ($75,000) so as to enhance overall fairness to Class members by avoiding any awards based on what may be statistical anomalies.

3. The Class Reaction Has Been Extremely Positive

As aforementioned, no Class member has objected to the Settlement Agreement and Mutual General Release on September 22, 2004. Of course, the Court would be entitled to approve the settlement even if objections had been received. See, e.g., Grant v. Bethlehem Steel Corp., 823 F.2d 20 (2d Cir. 1987) (affirming approval of settlement of employment discrimination action despite objections by 45 of 126 class members who responded to notice); Holden v. Burlington Northern, Inc., 665 F. Supp. 1398 (D. Minn. 1987) (opposition of five named plaintiffs

[6] Initially, such data were only available for 1999 and 2000, and the plan was to provide Class members with recoveries for 2001 and 2003 based upon their 1999 or 2000 recovery, whichever was greater. When 2001-03 data became available, however, Co-lead Counsel for the Class decided that it was necessary to analyze the new data even though doing so would substantially increase related expert expenses. This has now been completed. See supra n. 4.

to Title VII gender discrimination action did not block settlement approval). Notice of the settlement, required under Rule 23(e), was given to absent class members pursuant to this Court's Order dated October 21, 2004. The responses received to the Notice are summarized in the D'Urso Affidavit (Exhibit D hereto) and below:

- Fourteen Class members requested to meet with Plaintiffs' statistical expert on November 9, 2004 to learn how settlement awards were being calculated.
- Four Class members wrote to make sure that their educational achievements were accurately recorded in Sunoco's H.R. data base.
- Three other Class members wrote to correct their names and/or addresses.
- Three other Class members wrote to generally express support for the Ketchum action and to provide (unsolicited) anecdotal evidence in support of their own claims.
- Two Class members (both Named Plaintiffs) requested to speak at the November 30, 2004 Final Fairness Hearing.

In summary, the reaction of the Class favors approval of the proposed settlement.

VI. CLASS COUNSEL'S REQUEST FOR ATTORNEYS' FEES, COSTS AND EXPENSES SHOULD BE APPROVED

A. FEES REQUESTED

For their work leading to this Motion for Final Settlement Approval, Co-Lead Counsel[7] request fees in the amount of $1.5 million, to be divided among all Plaintiffs' counsel as follows:

[7] Mr. Green also joins in requesting the division of fees set forth herein.

firm	fee	lodestar (hours x hourly rate)	multiplier
Kohn, Swift & Graf, P.C.	$675,000	$470,419	1.43
Robert T. Vance, Jr.	$675,000	$318,750	2.12
Isaac H. Green, Jr.	$75,000	$27,080	2.77
Adrian J. Moody	$75,000	(presently unavailable)	
TOTAL	$1,500,000		

The Defendant has agreed to pay $1.5 million in fees. Class members were apprised of their Counsel's fee request and none objected. As indicated by this response, Class Counsel's requested fees are reasonable and should be approved in their entirety.

At the outset of the fee inquiry, two fundamental propositions should be noted. First, "there is no doubt that attorneys may properly receive a portion of the settlement fund in recognition of the benefit they have bestowed on class members." Orthopedic Bone Screw Litig., 2000 U.S. Dist. LEXIS 15980 at **16-17 (citing Lachance v. Harrington, 965 F. Supp. 630, 646 (E.D. Pa. 1997)).[8] Second, "[a]s with every other component of a class action settlement, fee

[8] As the Supreme Court stated in Boeing Co. v. Van Gemert, 444 U.S. 472 (1980):

> [A] litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole. ... The common-fund doctrine reflects the traditional practice in courts of equity . . . and it stands as a well-recognized exception to the general principle that requires every litigant to bear his own attorney's fees .

Id. at 478 (citations omitted). See also Lindy Bros. Builders, Inc. v. American Radiator & Standard Sanitary Corporation, 487 F.2d 161, 165 (3d Cir. 1973) (Lindy I) (a common fund award "is analogous to an action in quantum meruit: the [attorney] seeking compensation has, by his actions, benefitted another and seeks payment for the value of the service performed."). Accord Lindy Bros. Builders, Inc. v. American Radiator & Standard Sanitary Corporation, 540 F.2d 102 (3d Cir. 1976) (Lindy II).

petitions must be thoroughly reviewed for fairness." Id. (citing In re General Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig., 55 F.3d 768, 819-20 (3d Cir. 1995)). Reviewing class counsel's fee petition under prevailing legal standards and ultimately deciding the proper amount of a fee award is a task that rests with the sound discretion of the court. Id. (citing In re Computron Software, Inc., 6 F. Supp. 2d 313, 321 (D.N.J. 1998)).

Courts generally employ two complementary approaches in awarding reasonable attorneys' fees. See Report of the Third Circuit Task Force, "Court Awarded Attorneys' Fees," 108 F.R.D. 237 (1985) ("Task Force Report"). Fees may be awarded based on the "percentage of recovery" method. See, e.g., In re Cendant Corporation Prides Litig., 243 F.3d 722, 734 (3rd Cir. 1). See also Task Force Report, 108 F.R.D. at 255 (in the traditional common fund situation, a district court "should attempt to establish a percentage fee arrangement"). In addition, the Third Circuit has "suggested that district courts cross-check the percentage award at which they arrive against the 'lodestar' award method." Gunter v. Ridgewood Energy Corp., 223 F.3d 190, 195 n.1 (3d Cir. 2000).[9]

A. Percentage of Recovery Method

The percentage of recovery method "is designed to allow courts to award fees from the fund 'in a manner that rewards counsel for success and penalizes it for failure.'" In re Prudential Ins. Co. America Sales Litigation, 148 F.3d 283, 333 (3rd Cir. 1998) (quoting In re General Motors Corp. Pick-Up Truck Fuel Tank Products Liability Litig., 55 F.3d at 821). The factors to be used in analyzing the percentage of recovery method are as follows:

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[9] In cases such as this one where the percentage method can be applied, the lodestar method may serve as a useful "check" on reasonableness. See, e.g., Prudential, 148 F.3d at 333; Cendent, 2001 U.S. App. LEXIS at 113, 195; Aetna, 2001 U.S. Dist. LEXIS at *42-43.

> (1) the size of the fund created and the number of persons benefitted; (2) the presence or absence of substantial objections by members of the class to the settlement terms and/or fees requested by counsel; (3) the skill and efficiency of the attorneys involved; (4) the complexity and duration of the litigation; (5) the risk of nonpayment; (6) the amount of time devoted to the case by plaintiffs' counsel; and (7) the awards in similar cases.

Cendant, 243 F.3d at 733. These factors are to be applied flexibly because "[e]ach case is different, and in certain cases, one factor may outweigh the rest." Gunter, 223 F.3d at 195 n.1. As with the factors used to assess the fairness of a settlement, the factors used to award Class Counsel's fee overlap and thus sensibly may be considered in groups. One factor which generally is given individual attention, and may well be the most important of those listed above, is how the fee requested in this action compares to fees awarded in other class actions.

1. Fee Awards In Other Class Actions

Class Counsel request an award of fees and expenses of $1.5 million, which is approximately 27% of the final settlement fund of $5.5 million agreed to by Sunoco. In Bone Screw Litig., Judge Bechtel noted that, in common fund class actions, class counsel routinely have been awarded fees of 25% to 33%. 2000 U.S. Dist. LEXIS 15980, *29. See also Lachance, 965 F. Supp. at 652. (approving a fee of 30% of percentage of net recovery[10] for class counsel).

2. Other Pertinent Factors: The Size of the Fund Created; The Absence of Objections; the Skill and Efficiency of Class Counsel; the Complexity of this Litigation; the Risk of Nonpayment; Time Devoted by Class Counsel

[10] Net recovery was calculated by subtracting litigation expenses from the gross settlement fund. See Lachance, supra at 649. In the instant case, after subtracting $150,000 in expenses from the $5.5 million gross fund, Class Counsel's proposed fee of $1.5 million is approximately 28.2% of the common fund, well within the range of reasonableness.

As this Court knows, settlement of this action creates a $3.59 million fund to benefit approximately 200 Class members. As also aforementioned, no Class member objected to the requested fees which were properly disclosed in the settlement notice.

Class Counsel are experienced litigators with expertise in civil rights, employment discrimination and class action matters – exactly the disciplines in which expertise was needed here. Class Counsel provided significant amounts of time and expenses without any guarantee of payment or reimbursement. These factors suggest that 27% is a reasonable percentage.

B. The Lodestar Method

This method requires a Court to multiply the number of hours expended by Class attorneys by the attorneys' normal hourly rates to create a "lodestar" figure, which may be adjusted upwards or downwards to account for the contingent nature of the case, the quality of work performed, delay in payment and other factors. When using the lodestar method as a cross-check, attorneys' hours "need not be exhaustively scrutinized." Orthopedic Bone Screw Litig., 2000 U.S. Dist. LEXIS 15980 at *33 (quoting Goldberger v. Integrated Resources Inc., 209 F.3d 43, 50 (2d Cir. 2000)). Instead, the primary purpose of the lodestar "check" is to avoid fee awards that would implement outlandish hourly rates.

Courts often adjust counsel fees upward in class actions; multipliers of "one to four are frequently awarded in common fund cases." 3 Newburg § 14.03 at 14-5 (cited with approval in Cendant, 243 F.3d at 742).[11] In Prudential, 148 F.3d at 340, the Third Circuit questioned a 9.3

[11] Courts employ multipliers, inter alia, to "reflect the risks of nonrecovery facing counsel, ... [to] serve as an incentive for counsel to undertake socially beneficial litigation, or [to] reward counsel for an extraordinary result." Prudential, 148 F.3d at 340. After reviewing a summary of very large settlements, ranging from $100 million to $3 billion, the Cendant Court suggested that a multiplier of three, which in that case yielded an effective hourly rate of $1,485, was appropriate

multiplier awarded in Weiss v. Mercedes-Benz of North America, Inc., 66 F.3d 314 (3d Cir. 1995), affirming 899 F. Supp 1297, 1304 (D. N.J.), but only because suggestions had been made that class counsel had primarily benefitted from the work of public agencies, rather than their own efforts, in achieving this result. See Prudential, 148 F.3d at 337.

Class counsel submits that $1.5 million is entirely fair in light of the amount of time devoted to the case; the entirely contingent nature of this case; the result achieved; the quality of Plaintiff's Counsel's work; the complexity of this case; the risks assumed; the delay in receipt of payment for their services; the number of persons benefitted; and the complete absence of objections to the settlement or the fee request.

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even though that action, unlike this one, "was neither legally nor factually complex and did not require significant motion practice or discovery ... and the entire duration of the case ... was only four months." Cendant, 243 F.3d at 742.

Class Counsel also seek reimbursement of the $150,000 in litigation expenses. These reimbursements should be distributed[12] as follows:

Kohn, Swift & Graf, P.C.	$81,800
Robert Vance	$7,641
Class Members (reimbursement of initial contribution and fund raising)	$60,559
Total	$150,000

Affidavits of counsel, which set forth their time and expenses attached hereto as follows: Kohn, Swift & Graf (Exhibit F); Robert Vance (Exhibit G); Isaac Green (Exhibit H).

[12] Plaintiffs' expenses are not yet complete because Plaintiffs' experts, Econsult, are just completing their analysis of Sunoco's newly produced compensation data and have not yet submitted a related invoice. Econsult has estimated, however, that their final invoice will be approximately $15,000 including costs associated with their appearance at the Final Fairness Hearing.

VII. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant final approval of the proposed settlement, and award $1.5 million in fees and $150,000 in expenses.

Dated: November 24, 2004

Respectfully submitted,

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