

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

LOREN L. CASSELL, et al.,)	
)	
Plaintiffs,)	
)	
v.)	NO. 3:16-cv-02086
)	
VANDERBILT UNIVERSITY, et al.,)	
)	
Defendants.)	

ORDER

Pending before the Court is Plaintiffs’ Motion for Attorney Fees, Reimbursement of Expenses and Case Contribution Awards for Named Plaintiffs (Doc. No. 154) that is supported by affidavits of Plaintiffs’ counsel of record. This motion is not opposed by Defendants. The Court has reviewed Class Counsel’s request and supporting evidence, as well as attorney-fee and class-representative awards from similar cases and finds as follows:

1. This case commenced on August 10, 2016, based on Plaintiffs allegations that Defendants (1) breached their fiduciary duties by causing the Vanderbilt University Retirement Plan and the Vanderbilt University New Faculty Plan (the “Plan”) to incur unreasonable recordkeeping expenses; (2) failed to prudently monitor Plan investment options, which resulted in the use of high-cost, low-performing funds compared to available alternatives; and (3) breached their fiduciary duties and committed prohibited transactions.

2. On October 23, 2018, the Court granted Plaintiffs’ motion to certify the class under Rule 23(b)(1), appointed Schlichter Bogard & Denton Class Counsel and appointed Named

Plaintiffs Loren L. Cassell, Pamela M. Steele, John E. Rice, Penelope A. Adgent, Dawn E. Crago and Lynda Payne class representatives. (Doc. No. 127).

3. On February 25, 2019, the parties notified the Court that they reached a settlement in principle after mediation. The Court has entered a Final Order and Judgment approving the parties settlement on October 22, 2019.

4. Class Counsel filed the pending motion for attorneys' fees in the amount of \$4,833,333.33 (one-third of the monetary recovery), reimbursement of \$160,080 in litigation-advanced expenses, and case contribution awards of \$25,000 each for Named Plaintiffs Loren L. Cassell, Pamela M. Steele, John E. Rice, Penelope A. Adgent, Dawn E. Crago, and Lynda Payne. Docs. 154 and 155. Defendants do not oppose the motion.

5. In determining a reasonable attorney fee in common fund cases, the Court is guided by six factors: (1) the value of the benefit to the class, (2) society's stake in rewarding attorneys who produce such benefits in order to maintain an incentive to others, (3) whether the services were undertaken on a contingent fee basis, (4) the value of the services on an hourly basis, (5) the complexity of the litigation, and (6) the professional skill and standing of counsel involved on both sides. *Ramey v. Cincinnati Enquirer, Inc.*, 508 F.2d 1188, 1196 (6th Cir. 1974). The Court finds that Plaintiffs' motion satisfies each factor.

Class Counsel requests attorneys' fees of 33 1/3% of the settlement proceeds, which would be \$4,833,333.33. The requested fee of one-third of the monetary recovery is reasonable and appropriate given the "risky" nature of the litigation and substantial possibility of nonpayment. In particular, in this case, and 403(b) excessive fee cases, the risk of nonpayment was high because no other excessive 403(b) fee lawsuit had been filed. This case required a willingness by counsel to risk very significant amounts of time and money. Contingent fees of up to one-third are

common. This is a highly complex case with numerous issues that were vigorously contested. The size and complexity of the issues before the Court, and the novelty of the litigated claims involving a 403(b) plan, are more than sufficient reasons to support a one-third contingent fee.

Class Counsel Schlichter Bogard & Denton has spent approximately 4,571 hours of attorney time and 458 hours of non-attorney time on this matter to date. Based on the documentation submitted by Class Counsel, the Court finds that the time spent by Class Counsel on the case is reasonable considering the complexity and number of contested issues throughout the litigation. For Schlichter Bogard & Denton, the approved hourly rates are as follows: for attorneys with at least 25 years of experience, \$1,060 per hour; for attorneys with 15–24 years of experience, \$900 per hour; for attorneys with 5–14 years of experience, \$650 per hour; for attorneys with 2–4 years of experience, \$490 per hour; and for Paralegals and Law Clerks, \$330 per hour. These reasonable hourly rates were independently verified by a recognized expert in attorney-fee litigation who opined that Class Counsel’s requested rates were reasonable based on rates charged by national attorneys of equivalent experience, skill, and expertise in complex class action litigation. Using the approved rates set forth above, the lodestar is \$3,447,826. The requested fee would result in a lodestar multiplier of 1.4—well within the range routinely approved. Given the substantial risks involved in ERISA excessive fee cases, a risk multiplier is appropriate in this case. This demonstrates the reasonableness of the requested fee award.

Class Counsel achieved an excellent result on behalf of the class, which has been recognized as the “most critical factor.” Class members will receive compensation and be able to invest their proceeds immediately. This adds more value to the settlement. Current participants will receive their distributions directly into their accounts tax deferred and former participants have the right to direct their distribution into a tax-deferred vehicle, such as an individual retirement

account. It appears that the actual value to the class of the monetary portion of the settlement is greater than the amount of the settlement.

Additionally, it is important to the Court that the Independent Fiduciary has independently analyzed the reasonableness of the requested fee, and has concluded that the requested fee and reimbursement of expenses is reasonable.

Apart from the significant monetary relief, the affirmative relief herein is extensive and provides substantial additional value to the Class. In particular, Defendants agreed to the following: (1) provide a list of the Plan's investment options and fees to Class Counsel; (2) communicate by email with current Plan participants regarding fees and performance of frozen annuity accounts and current investment options; (3) conduct a request for proposals for recordkeeping and administrative services ("RFP") by April 1, 2022; (4) contractually prohibit the recordkeeper from using information about Plan participants acquired in the course of providing recordkeeping services to the Plan to market or sell products or services unrelated to the Plan to Plan participants unless a request for such products or services is initiated by a Plan participant; (5) provide to Class Counsel the best and final bid amounts that were submitted in response to the RFP and a copy of the agreed-upon contract for recordkeeping services; (6) take into account the cost of different share classes in providing investment options; (7) inform Fidelity, the Plan's current recordkeeper, that when communicating with current Plan participants, Fidelity must refrain from using information about Plan participants acquired in the course of providing recordkeeping services to the Plan to market or sell products or services unrelated to the Plan unless a request for such products or services is initiated by a Plan participant; and (8) continue its engagement with an independent consultant to provide ongoing investment monitoring services for the Plan. Doc. 147-1 (¶¶10.1–10.11).

Under Rule 23(h), this court may award nontaxable costs that are authorized by law or the parties' agreement. Fed. R. Civ. P. 23(h). A cost award is authorized by both the parties' settlement agreement and the common fund doctrine. Reasonable and necessary expenses may include such items as photocopying, postage, travel, lodging and filing fees.

Class Counsel requests reimbursement of expenses in the amount of \$160,080. The requested expenses are all for legitimate costs associated with prosecuting the case and the amounts are reasonable. The Court finds that Class Counsel's request is fair and reasonable.

Class Counsel requests a case contribution award of \$25,000 each for Class Representatives Cassell, Steele, Rice, Adgent, Crago, and Payne. The class representatives provided assistance to Class Counsel in prosecuting the case.

The Court finds that the requested case contribution award for the class representatives is reasonable and appropriate.

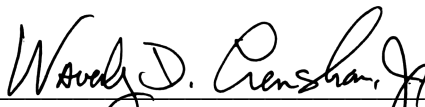
1. Plaintiffs' motion for attorneys' fees, reimbursement of expenses, and case contribution awards for Named Plaintiffs is **GRANTED**.

2. The Court awards Class Counsel an attorney fee of \$4,833,333, to be paid from the settlement amount.

3. The Court awards Class Counsel expenses of \$160,080, which are to be paid from the settlement amount.

4. The Court awards a case contribution award of \$25,000 each for Class Representatives Loren L. Cassell, Pamela M. Steele, John E. Rice, Penelope A. Adgent, Dawn E. Crago and Lynda Payne, also to be paid from the settlement amount.

IT IS SO ORDERED.



WAVERLY D. CRENSHAW, JR.
CHIEF UNITED STATES DISTRICT JUDGE