

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

**LINDA H. GRIER and
THOMAS B. GRIER, individually
and on behalf of all others
similarly situated**

CIVIL ACTION

NO. 99-180

v.

**CHASE MANHATTAN AUTOMOTIVE
FINANCE CO.**

MEMORANDUM

BRODERICK, J.

FEBRUARY 16 , 2000

Presently before this Court is Plaintiffs' unopposed motion requesting the certification of a settlement class as well as final approval of the proposed Settlement between the Plaintiffs and Defendant Chase Manhattan Automotive Finance Co., ("Chase"), pursuant to Federal Rule of Civil Procedure 23. For the reasons that follow, the Court will certify the settlement class and approve the settlement as fair, reasonable and adequate. The Court will also grant Plaintiffs' request for attorneys' fees and costs.

Background

This class action, involving the consumer lease of automobiles by Defendant, was commenced on January 13, 1999 by Plaintiffs, Linda and Thomas Grier, on behalf of themselves and all others similarly situated. On September 15, 1995, the Griers entered into a consumer lease with Defendant in Langhorne, Bucks County, Pennsylvania for a 1996 Dodge Grand Caravan. The Griers' lease agreement provided that they were required to make 36 monthly payments of \$323.09 for a total of \$11,631.24. These payments were through Chase's Paymatics

system which provided for automatic withdrawal (“AW”) of payments from Plaintiffs’ bank accounts. The Griers allege that Defendant failed to terminate the AW when their lease expired on September 14, 1998 and that Defendant then collected additional payments not authorized by the lease agreement. Further, the Griers allege that Chase retained and refused to refund the extra payments collected by AW after their lease termination. The Griers allege that Defendant maintained a policy and practice of improperly collecting and retaining extra AW payments from all of its customers who entered consumer leases for automobiles and participated in the Paymatics program. The Griers claim that Chase’s actions violated the Consumer Leasing Act, 15 U.S.C. § 1667a, and the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. §§ 201-1 et seq, and other states’ consumer protection laws. The Griers further allege that Chase’s actions constitute a breach of their lease agreements.

In June, 1999, approximately five months after the filing of the complaint, the parties commenced settlement negotiations. On October 15, 1999, the parties entered into a class action settlement agreement, (the “Settlement Agreement”). This Settlement Agreement provides that Chase modify its leasing practices and make the appropriate changes in its computer system so that effective May 12, 1999, lease payments are no longer automatically withdrawn after the lease maturity date. The Settlement Agreement further provides that Chase will pay to members of the Plaintiff class 100% of the amount of the lease payment that was automatically withdrawn after the Lease Maturity Date less the prorata share of attorneys’ fees and costs awarded by the Court. If a partial cash refund of those payments was previously made, Chase will pay 100% of the difference between that partial refund and the amount automatically withdrawn after the Lease Maturity Date, less the prorata share of attorneys’ fees and costs.

The Settlement Agreement also provides that Chase reserves the right to pursue claims for excess wear and tear and other lease charges it has against Class members; but that Chase will not set off any such charges against the payments required by the settlement. The Settlement Agreement contains a list of the 961 Class members compiled from Chase's records, as well as the payments each Class member is entitled to receive prior to the payment of attorneys' fees and costs. The Settlement sets a deadline of September 15, 2000 for any Class member who no longer resides at their last address of record (and where no forwarding information is of record with the United States Postal Service) or any class member that does not appear on Chase's list, to contact Chase to request payment. According to the Settlement, Chase has no obligation to make payments beyond that date. The Settlement also provides that Chase will bear all administration of costs and expenses for implementation of the settlement, and that attorneys' fees and litigation costs will be deducted from the Settlement Fund subject to this Court's approval. The Settlement releases Chase from all further liability relating to the automatic withdrawal of lease payments after the Lease Maturity Date.

In an Order dated November 9, 1999, this Court provisionally certified a Settlement Class comprised of the following:

All persons who entered into a motor vehicle lease with, or which was transferred or assigned to, Chase Manhattan Automotive Finance Corporation where the lease payments were made by automatic withdrawal from the person's bank account and (a) a lease payment was automatically withdrawn after the Lease Maturity Date (the date the lease is scheduled to terminate) and (b) a full cash refund of that payment was not made. Excluded from the class are those persons who requested that the vehicle be returned to Chase after the Lease Maturity Date or who actually returned the vehicle after the Lease Maturity Date (where Chase provided instructions to the person for the return of the vehicle on or before the Lease Maturity Date).

The Court also provisionally approved the proposed settlement and the proposed Class Notice. On December 2, 1999, the Notice was mailed by first-class mail, postage pre-paid to all 961 members of the Settlement Class at their last known address. On December 1, 1999 a Summary Notice directed to the Settlement Class was published in the legal notices section of the Philadelphia Inquirer and USA Today. The Court further ordered that all requests for exclusion from the Settlement Class were to be postmarked on or before February 1, 2000 and filed with the Clerk of the Court and that all objections to the proposed Settlement were to be filed by February 5, 2000. There were no requests for exclusion from the Settlement Class filed with the Clerk of the Court, nor were there any objections to the Settlement filed. Finally, the Court scheduled a hearing, which was held on February 15, 2000 to determine the fairness of the proposed Settlement as well as to entertain the application of Plaintiffs' counsel for an award of attorneys' fees and costs. No Settlement Class member appeared at the hearing to assert any objection to the proposed Settlement or to the award of attorneys' fees.

Certification of the Settlement Class

As has heretofore been stated, this Court has provisionally certified the Settlement Class. The Third Circuit, in In re General Motors Corporation Pick-Up Truck Fuel Tank Products Liability Litigation, 55 F.3d 768 (3d Cir. 1995) held that settlement classes are cognizable under Fed. R.Civ.Pro. 23, provided that actions certified as settlement classes meet the same requirements under Rule 23 as litigation classes. Id. at 799. "[A] class is a class is a class, and a settlement class, if it is to qualify under Rule 23, must meet all of its requirements." Id. Rule 23(a) states:

One or more members of a class may sue or be sued as representative parties on

behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

First, the Settlement Class is so numerous that joinder of all members as parties is impracticable. The Class consists of 961 members who have been identified from Chase's records. Such a large number of class members clearly satisfies Rule 23's numerosity requirement. Second, there are several questions of law and fact common to the members of the Settlement Class. Every member of the Settlement Class leased a motor vehicle from Chase by signing a lease that contained identical or similar disclosures under the Consumer Leasing Act. Every member also was enrolled in the Paymatics automatic withdrawal payment plan and had extra monthly lease payments taken out of their account which were not refunded in full. This factual scenario also raises questions of law common to the Class which include: whether Chase's lease disclosures violated the Consumer Leasing Act; whether Chase's policies under the Paymatics program violated relevant state consumer protection laws; and whether Chase's conduct breached the lease agreements of the Class members. Third, the representative Plaintiffs' claims are typical of the claims of the members of the Settlement Class. The claims of the Griers arise from the same conduct that gives rise to the claims of the other Class members. Moreover, the Griers raise the same legal theories and seek the same relief as do all the Class members. Fourth, and finally, the representative Plaintiffs have fairly and adequately represented the interests of the Settlement Class. The representative Plaintiffs have no interests that are antagonistic to the Class as a whole. Rather, the asserted legal rights and remedies sought, by both the representative Plaintiffs and the rest of the Class, are identical. Furthermore, Class counsel are able and experienced class

action litigators who have skillfully prosecuted this case for the benefit of all Class members.

The Court has also considered the additional requisites of Fed.R.Civ.Pro. 23(b)(3). Rule 23(b)(3) states:

the court [must] find that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. . .

In the present case, the claims of the representative plaintiffs and those of the rest of the Settlement Class rest upon the same factual scenario and the same legal theories. All Settlement Class members leased an automobile from Chase, signed similar or identical lease agreements and disclosure forms, and enrolled in the Paymatics automatic withdrawal program. All Settlement Class members allege that Chase improperly withdrew and refused to refund extra lease payments from their accounts. All members of the Settlement Class allege that Chase's conduct violated the Federal Consumer Leasing Act and state consumer protection laws and constituted a breach of their lease agreements. The average claim amount of each individual Class member is \$274.64, an amount which is insignificant to warrant individual litigation of each claim. Therefore, a class action is a superior method of adjudicating this controversy because it concentrates a high number of significantly identical and relatively small individual claims in a single forum, thus promoting judicial economy by avoiding duplicative litigation and costs. Having considered the requirements of Rule 23, this Court finds that a class action is superior to all other available methods for the fair and efficient adjudication of this controversy, and will thus certify the Settlement Class pursuant to Fed.R.Civ.Pro. 23.

Court Approval of Proposed Settlement

Federal Rule of Civil Procedure 23(e) requires court approval of a class action settlement.

Rule 23 (e) provides:

A class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs.

The Third Circuit has recognized 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, 55 F.3d 768, 784 (3d Cir. 1995). The Third Circuit in General Motors also noted “[t]he parties may also gain significantly from avoiding the costs and risks of a lengthy and complex trial.” Id.

Although settlement is favored, the district court has a duty to scrutinize the agreement to insure its fairness to the members of the Class before giving final approval under Rule 23(e). The Third Circuit has described the role of the district court as that of “a fiduciary who must serve as a guardian of the rights of absent class members. . . [T]he court cannot accept a settlement that the proponents have not shown to be fair, reasonable and adequate.” General Motors at 785.

The Court begins its analysis with a presumption that the proposed Settlement Agreement is valid. An initial presumption of fairness attaches to a class settlement reached in arms-length negotiations between experienced and capable counsel after meaningful discovery. In re Residential Doors Antitrust Litigation, 1998 WL 151804 at *6 (E.D. Pa. April 2, 1998); General Motors at 785. Both the Plaintiff Class and Defendant in this case are represented by able and experienced counsel. The parties engaged in hard-fought settlement negotiations lasting approximately four months, which occurred after ample discovery. Counsel for both parties

consider the Settlement to be a fair resolution of their differences. In light of their experience, this Court accords their assessment considerable weight.

The Third Circuit has developed nine factors generally relevant to the court's evaluation of the fairness of a proposed settlement. See Girsh v. Jepson, 521 F.2d 153, 157 (3d Cir. 1975). The relevant factors are: (1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the litigation; (3) the stage of the proceeding and the amount of discovery completed; (4) the risks of not establishing liability; (5) the risks of not establishing damages and other relief; (6) the risks of not maintaining the class action through the trial; (7) the defendant's ability 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. Id.

Applying these factors to the instant case, the Court finds that the Settlement in this case is sufficiently fair, adequate and reasonable to meet the requisites of Rule 23(e). First, continued litigation in this matter would involve interpretation of a statute that, although seemingly not complex, is seldom litigated and without much controlling precedent. Therefore, it is likely that whatever the result at trial level, the matter may have been appealed. Continued litigation would thus likely have proved contentious and costly, posing significant risks for all concerned. On the other hand, this settlement promptly affords all members of the Settlement Class complete compensatory relief.

Second, the reaction of the Settlement Class to the proposed settlement is one of the most important factors to be weighed in determining the adequacy of the settlement, particularly when the relief is expressed in monetary terms. As has been detailed above, Chase sent notice of the

Settlement to the 961 members of the Settlement Class. Chase also printed a summary notice in both the Philadelphia Inquirer and USA Today. Of these 961 Class members, not a single one requested exclusion or expressed objection to the Settlement. Indeed, the absence of objections is hardly surprising given the fact that the Settlement provides class members with full refunds for the amount of money that was wrongfully withdrawn from their accounts. The absence of objections to the Settlement militates strongly in favor of approval.

Third, the stage of the proceeding and the amount of discovery completed also weighs in favor of approval of the Settlement. At the time of the proposed Settlement, the parties had conducted substantial discovery. The information obtained by Plaintiffs' counsel through this discovery enabled them to negotiate effectively with Defendant and obtain a favorable result for their clients. Plaintiffs also engaged in post-settlement discovery which included a Rule 30 (b)(6) deposition of Chase in order to verify that the information supplied to the Plaintiff Class during settlement negotiations concerning the identity of class members was correct; as well as to assure that Chase was complying with the equitable remedies it had agreed to under the Settlement Agreement.

In considering the fourth, fifth, and sixth Girsh factors, the Court determines that the benefits afforded by the Settlement far outweigh the risks to the Plaintiff Class of establishing liability and damages. Although Plaintiffs believe they could have prevailed at trial, Chase was prepared to vigorously defend its position by raising several defenses based upon a statutory interpretation of the Consumer Leasing Act. It is also likely that any determination as to the merits of Plaintiffs' claims may have been contested on appeal, given the dearth of caselaw regarding the statute in question.

With regard to the seventh Girsh factor, the Court notes that Chase, as a large corporation, could probably withstand a greater judgment than the \$264,750.43 total of the Settlement Fund. However, a consideration of the range of reasonableness of the Settlement, in light of the risks of litigation and the best possible recovery, weighs heavily in favor of approval. As has been stated, the Settlement provides all members of the Plaintiff Class with full refunds of the amounts improperly withdrawn by Chase. In short, each Plaintiff will receive complete compensatory relief minus their proportionate share of attorneys' fees after costs have been deducted. If this case were to be litigated, the best possible recovery for Plaintiff Class would be an award of compensatory damages, in addition to treble damages, which may be available under state consumer protection law, see 73 P.S. § 201-9.2 (a), and attorneys' fees which are recoverable under the Consumer Leasing Act. See 15 U.S.C. § 1640. However, continued litigation in this matter would undoubtedly have proved to be costly, time-consuming, and fraught with risk. This Settlement avoids those pitfalls by giving class members prompt and complete relief. Moreover, the equitable relief granted by the Settlement assures that future Chase lessees will not be subject to having amounts improperly withdrawn from their accounts after the expiration of their leases. In summary, the Court believes that the Settlement achieves an excellent result for all members of the Settlement Class. The Court will accordingly grant final approval to the Settlement and will dismiss this action with prejudice.

Attorneys' Fees and Costs

Plaintiffs' counsel requests a fee of \$87,986.69, as well as reimbursement of \$790.37 in out-of-pocket costs and expenses. The requested fee is equal to one-third of the net Settlement Fund, after deducting costs. The Notice distributed to the potential Class members stated that

Plaintiffs' counsel would request an award of attorneys' fees to the Court of up to one third of the Settlement fund in addition to costs. As stated above, no objections to the Settlement or to the award of attorneys' fees and costs were presented to the Court at the February 15, 2000 hearing. Moreover, no one appeared at the hearing to object to the settlement or to the proposed award of attorneys' fees and costs. Plaintiffs' counsel, the firm of Smolow & Landis, spent a total of 201.4 hours in pursuit of this action, including time spent negotiating the Settlement and seeking court approval.

The Supreme Court has recognized that a "litigant or 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 . . . Jurisdiction over the fund involved in the litigation allows a Court to prevent . . . inequity by assessing attorney's fees against the entire fund, thus spreading fees proportionately among those benefited by the suit." Boeing Co. v. Van Gemert, 444 U.S. 472, 478 (1980). The common fund doctrine rests on the assumption that individuals who profit from a lawsuit "without contributing to its costs are unjustly enriched at the successful litigant's expense." Id. at 478. Of course, thorough judicial review of fee applications is required in all class action settlements, especially in those where settlement occurs prior to class certification. In re General Motors, 55 F.3d at 819, and 797 n.19.

Two different methods for calculating fee awards have been commonly used in common fund cases, namely the lodestar method and the percentage of recovery method. The Third Circuit, in General Motors, made it clear that the percentage of recovery method is the preferred approach in class actions. "Courts use the percentage of recovery method in common fund cases on the theory that the class would be unjustly enriched if it did not compensate the counsel

responsible for generating the valuable fund bestowed on the class. . . the court apportions the fund between the class and its counsel in a manner that rewards counsel for success and penalizes it for failure.” General Motors, 55 F.3d at 821. Regardless of the method chosen, the Third Circuit advised that it is sensible for a court to cross check its conclusion regarding the appropriate fee calculation by using the alternative method. Id. at 822. Because the instant case involves a relatively straightforward common fund, the Court will apply the percentage of recovery method to determine the appropriate amount for which counsel should be compensated.

Although no strict rule dictates the reasonable percentage a court should award class counsel, this Court in In re Smithkline Beckman Corp. Sec. Litig., 751 F.Supp. 525, 533 (E.D. Pa. 1990), noted that Courts have allowed attorney compensation ranging from 19 to 45% of the settlement fund. In general, to avoid windfalls, the percentage of recovery should “decrease as the size of the fund increases.” Court Awarded Attorney Fees: Report of the Third Circuit Task Force (1985), reprinted 108 F.R.D. 237, 256.

Having examined Plaintiffs’ counsels’ fee request and the record of this litigation, the Court finds that a fee award of \$87,986.69, which is equal to one third of the net Settlement Fund after having deducted costs, is reasonable. The Court’s review reveals that members of the Class were well served by experienced and skilled attorneys. As stated above, the Court finds that the Settlement Agreement which provides that Chase will pay back 100% of the disputed funds, and that Chase modifies its leasing policies to alleviate its allegedly unlawful conduct, obtains an excellent result for the Class. Counsel diligently developed the facts and legal issues, analyzed a multitude of documents in order to identify the members of the class, and were steadfast in settlement negotiations with Defendant. Moreover, the Court also notes that because the

common fund is relatively small in this case, it is appropriate to award a higher percentage than that awarded in cases which have resulted in substantially larger funds. See SmithKline, 751 F.Supp. at 534.

Finally, as recommended by the Third Circuit in General Motors, the lodestar method may be used “to assure that the precise percentage awarded is not unreasonable.” Id. at 22. Plaintiffs represent that an application of counsels’ present hourly billing rates for this type of class action litigation leads to a total lodestar of \$74,182.50. Plaintiffs’ counsel’s request for \$87,986.69 is therefore more than the lodestar amount. However, the Third Circuit has held that the lodestar may be increased or decreased by the Court after a consideration of “the quality of the attorney’s work.” Lindy Bros. Builders, Inc. v. American Radiator & Standard Sanitary Corp., 487 F.2d 161, 168 (3d Cir. 1973). In light of the skill counsel has exercised in obtaining such a favorable settlement for the Class, as well as the injunctive relief gained, which insures that Chase will refrain from withdrawing lease payments after the expiration of their customers’ leases, the Court believes that Plaintiffs’ counsel’s requested fee award of \$87,986.69 is reasonable.

Plaintiff’s counsel has also requested reimbursement for litigation costs in the amount of \$790.37. These expenses include filing fees, electronic research fees, mailing costs, and court reporter fees. The Court finds these expenses to be adequately documented, proper, and reasonable, and will therefore award counsel a reimbursement of these expenses from the gross amount of the Settlement Fund.

An appropriate Order follows.

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CIVIL ACTION

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ORDER

AND NOW, this 16th day of February, 2000, the Court having considered Plaintiff Class's Motion for Final Approval of Class Action Settlement between Plaintiff Class and Defendant Chase Manhattan Automotive Finance Co. and Plaintiffs' Petition for Attorney's Fees and Reimbursement of Costs; for the reasons set forth in this Court's accompanying Memorandum of this date;

IT IS ORDERED: The Class Action Settlement Agreement dated October 15, 1999 is hereby **APPROVED** pursuant to Fed.R.Civ.Pro. 23 (e) as fair, reasonable and adequate, and in the best interests of the Plaintiff Class;

IT IS FURTHER ORDERED: This action is certified as a class action on behalf of the following Class:

All persons who entered into a motor vehicle lease with, or which was transferred or assigned to, Chase Manhattan Automotive Finance Corporation where the lease payments were made by automatic withdrawal from the person's bank account and (a) a lease payment was automatically withdrawn after the Lease Maturity Date (the date the lease is scheduled to terminate) and (b) a full cash refund of that payment was not made. Excluded from the class are those persons who requested that the vehicle be returned to Chase after the Lease Maturity Date or who actually returned the vehicle after the Lease Maturity Date (where Chase provided instructions to the person for the return of the vehicle on or before the Lease Maturity Date).

IT IS FURTHER ORDERED: The parties are directed to carry out the terms of the Settlement Agreement as set forth therein; pursuant to the Settlement Agreement, Plaintiffs, acting individually and on behalf of all members of the Plaintiff Class (there being no exclusions from the Plaintiff Class), have released and discharged Chase Manhattan Automotive Finance Corp., and its officers, directors, shareholders, agents, employees, parents, subsidiaries, affiliates, successors and assigns, from any and all causes of action, lawsuits, claims, counterclaims, judgments and demands, in law or in equity, based on or arising from the allegations contained in the Class Action Complaint, whether known or unknown and whether or not heretofore asserted, including without limitation all claims related to the automatic withdrawal of lease payments from the lessee's bank account after the lease maturity date, that Plaintiffs and members of the Plaintiff Class did assert or could have asserted.

IT IS FURTHER ORDERED: This action is **DISMISSED WITH PREJUDICE**. The Court retains jurisdiction over the interpretation, effectuation and implementation of the Settlement Agreement.

IT IS FURTHER ORDERED: that the payment to Smolow & Landis, as class counsel, of attorneys' fees of \$87,986.69 plus reimbursement of costs and expenses in the amount of \$790.37 for a total of \$88,777.06 is hereby **APPROVED**. This payment shall be made from the Settlement Fund as set forth in Section D. of the Settlement Agreement.

RAYMOND J. BRODERICK, J.