

investment community to maximize shareholder value.

Finally, defendant Gerald Gagliardi was Executive Vice President of Global Customer Services of Unisys from 1996 until October 14, 1999 when Unisys announced that he was leaving the company at the time of corporate reorganization.

Plaintiffs allege that between May 4, 1999 and October 14, 1999, the defendants disseminated knowingly false and misleading statements about long term contracts with British Telecommunications ("BT") and the United States government in violation of section 10(b) of Securities Exchange Act of 1934, 15 U.S.C. § 78j(b), rule 10(b)-5, 17 C.F.R. § 240.10b-5, and section 20(a) of the Securities Exchange Act of 1934, 15 U.S.C. § 78t(a). These statements were made in two separate press releases issued on May 4, 1999, at the Company's annual meeting with stock analysts held on the same day, and a July 15, 1999 press release (the "statements").

On October 10, 2001, this Court entered an Order preliminarily approving the settlement, and directing that a hearing be held on December 5, 2001 to determine the fairness, reasonableness, and adequacy of the proposed settlement. Under the terms of the proposed settlement, defendants have agreed to pay \$5,750,000 in cash, plus interest, to the Class. Additionally, plaintiffs' counsel petition the court for an award 33% of the settlement fund, and for expenses.

Beginning on October 19, 2001, and pursuant to this Court's October 10, 2001 Order, Notice was mailed to the Class. That Notice contained: 1) the October 19, 2001 Order; 2) Notice of Pendency; 3) Settlement of Class Action; 4) Proof of Claim; and 5) Release Form. Additionally, a Summary Notice of Pendency and Settlement of Class Action was published in the national edition of the Wall Street Journal on November 1, 2001. No class member objected to the Settlement, and three class members have elected to opt-out of the settlement.

On December 5, 2001 the Court held a hearing concerning the proposed settlement, and payment of attorney's fees and costs. The Court has reviewed the parties' extensive written submissions, and in light of those submissions, and the December 5, 2001 hearing, the Court turns to the instant motion.

II. DISCUSSION

Under Federal Rule of Civil Procedure Rule 23(e), the District Court acts as a fiduciary guarding the rights of absent class members and must determine that the proffered settlement is "fair, reasonable, and adequate." In re Cendant Corp. Litigation, 264 F.3d 201, 231 (3d Cir. 2001).

The decision of whether to approve a proposed settlement is left to the sound discretion of the Court. Girsh v. Jepson, 521 F.2d 153, 157 (3d Cir. 1975). However, the Third Circuit has set forth nine factors to guide district courts when

they consider proposed class action settlements: 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; 5) the risks of establishing damages; 6) the risks of maintaining the class action through trial; 7) the ability of the defendants 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 in light of all the attendant risks of litigation. Girsh, 521 F.2d at 157.

Upon a review of the parties submissions, and counsel's statements during the December 5, 2001 hearing, the Court is satisfied that the Girsh factors mentioned above weigh heavily in favor of approving the settlement and that the settlement is fair, reasonable, and adequate. As the Court already noted in open court, the Girsh factors have been satisfied here, and the Court will not discuss each factor in this opinion. Nevertheless, the Court will highlight a few factors that weigh heavily in favor of settlement.

First, the Court notes the substantial risks the Class may have faced establishing damages. The parties agree that it would have been difficult to prove what portion, if any, of the drop in Unisys' stock price at the close of the class period was

attributable to the allegedly misleading statements. Indeed, as plaintiffs' counsel conceded during the December 5, 2001 hearing, sometime near the end of the class period, Unisys announced a major reorganization which likely also had a negative impact on Unisys' stock price. Thus, plaintiffs would have encountered difficulty attributing damages to the misleading statements that are the subject of plaintiffs' Complaint.

Additionally, the plaintiffs faced significant risk establishing liability. For example, defendants vigorously disputed whether the statements at issue were misleading. While plaintiffs contended that the statements announced that Unisys would generate huge revenue in the near future, defendants argue that their statements contained no such promise. Defendants contend that their announcements discussed potential revenues to be generated over a period of years, and in the case of one subject contract, over a ten year period. However, this is only one of many hotly contested issues surrounding liability, and the Court is convinced that the Class may have had difficulty proving liability.

The Court also recognizes that this case is complex as trial of this action would have been a lengthy, expensive affair, and the parties have indicated that an appeal would likely follow. This settlement provides an immediate and certain benefit to the class whereas trial may deny the Class any

recovery or at least deny the Class recovery for many years.

Finally, the Court notes that there are over 68,000 members of the Class. No member of the Class has objected to the settlement, and only three members have elected to opt out. Thus, the reaction of the Class weighs heavily in favor of approving the settlement, and the Court will approve the settlement.

Next, the Court will determine whether it will approve class counsels' petition for fees and reimbursement of expenses. This case is a "common fund" case as class counsel requests that its attorneys' fees and the clients' award come from the same source, and the requested fees are based on a percentage amount of the clients' settlement award. Gunter v. Ridgewood Energy Corp., F.3d 190, 194 n. 1 (3d Cir. 2000). The Supreme Court has long recognized that 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. See Boeing Co. v. Van Gemert, 444 U.S. 472, 478 (1980); Mills v. Electric Auto-Lite Co., 396 U.S. 375, 393 (1970); Sprague v. Ticonic National Bank, 307 U.S. 161 (1939); Trustees v. Greenough, 105 U.S. 527, 536 (1882). Further, the percentage of recovery method is generally favored in cases involving a common fund. In re Prudential Ins. Co. of America Sales

Practices Litigation, 148 F.3d 283, 333 (3d Cir. 1998).¹

Accordingly, the Court will award attorney's fees using the percentage of recovery approach. Under this approach, district courts should consider several factors in setting a fee award. These factors include: (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. Gunter v. Ridgewood Energy Corp., 223 F.3d 190, 195 n.1 (3d Cir. 2000).

Application of these factors to this case indicate that

¹The percentage of recovery method is one of two basic methods for calculating attorney's fees; the other is the lodestar method. In re Prudential Ins. Co. of America Sales Practices Litigation, 148 F.3d at 333. However, the lodestar method is more common in statutory fee-shifting cases, and is "designed to reward counsel for undertaking socially beneficial litigation in cases where the expected relief has a small enough monetary value that a percentage-of-recovery method would provide inadequate compensation." Id. (quoting In re General Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig., 55 F.3d 768, 821 (3d Cir. 1995)). On the other hand, the percentage of the 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.'" Id. Here, under the lodestar method of calculation, counsels' fees could easily be 30% higher than their request under the percentage of recovery method. (Memorandum of Law in Support of Class Counsels' Joint Petition for Fees and Reimbursement of Expenses, at 21-23).

the 33% fee sought by plaintiffs' counsel is fair and reasonable. Indeed, there are no objections to the proposed settlement or to the proposed fees requested by counsel. Further, counsel has conducted this litigation with skill, professionalism, and extraordinary efficiency. Plaintiffs' counsel received, reviewed and analyzed over one million pages of Unisys' documents, briefed and successfully argued against a substantial Motion to Dismiss and several discovery motions. Additionally, plaintiffs' co-lead counsel proposed and entered into a mediation of this case through a private mediator. Counsel prepared an extensive brief in support of their position, and negotiated the proposed settlement the Court now considers. Had the mediation failed, plaintiffs' counsel would have had to prepare this case for trial, a situation that would have greatly increased the expenses for the Class, and likely delayed or jeopardized any recovery.

As discussed earlier, this case was complex, and the risk of non-payment was substantial. Indeed, plaintiffs' counsel faced serious difficulties proving liability and damages. Moreover, plaintiffs' counsel have spent over 8,700 hours on this litigation. Finally, awards in similar cases justify a 33% award here. E.g., In re Safety Components, Inc. Securities Litigation, 166 F. Supp.2d 72, 102 (D.N.J. 2001) (approving request of 33 1/3 of a \$4.5 million settlement); Neuberger v. Shapiro, 110 F. Supp.2d 373, 386 (E.D.Pa. 2000) (approving 33 1/3% of a

\$4,325,000 settlement fund); see also In re: Tel-Save Securities Litigation, No. 98-3145 (E.D.Pa., Nov. 9, 2001) (Buckwalter, J.) (approving fee request of 33 1/3 of a \$5,750,000 cash settlement). Here, this Court finds no basis to reduce the requested fee award, and finds that the 33% fee sought by plaintiffs' counsel is fair and reasonable.

Finally, the Court finds that plaintiffs' counsel is entitled to reimbursement of expenses. "Counsel for a class action is entitled to reimbursement of expenses that were adequately documented and reasonably and appropriately incurred in the prosecution of the class action." In re Safety Components, Inc. Securities Litigation, 166 F. Supp.2d at 108 (citing Abrams v. Lightlier, Inc., 50 F.3d 1204, 1225 (3d Cir. 1995)).

Here, plaintiffs' counsel seek \$572,676.56 in expenses. The Court has reviewed the Compendium of Supporting Affidavits, and other supporting evidence, and finds that the expenses requested by plaintiffs' counsel were adequately documented, reasonable and appropriately incurred in the litigation of this matter. Among other things, plaintiffs' counsel seeks reimbursement for photocopying, telephone and fax, computer assisted legal research, postage, professional fees, travel, commercial copying and filing fees. A substantial portion of plaintiffs' counsel's expenses relate to fees paid to experts who

assisted with the retrieval of electronic documents from Unisys' computer system. Other courts have held that photocopying expenses, telephone and fax charges, and postage, messenger and express mail service charges are reasonably incurred in connection with the prosecution of a large litigation. E.g., In re Safety Components, Inc. Securities Litigation, 166 F. Supp.2d at 108; Abrams, 50 F.3d at 1225; In re Residential Doors Antitrust Litig., No. 96-2125, 1998 WL 151804, at *2 (E.D.Pa. April 2, 1998). Similarly, witness fees and the costs associated with expert witnesses and consultants are often deemed incidental to litigation. In re Safety Components, Inc. Securities Litigation, 166 F. Supp.2d at 108; Cullen v. Whitman Medical Corp., 197 F.R.D. 136, 151 (E.D.Pa. 2000). Likewise, computer-assisted legal research has been found incidental, if not essential, to successful prosecution of a litigation. In re Safety Components, Inc. Securities Litigation, 166 F. Supp.2d at 108; Cullen v. Whitman Medical Corp., 197 F.R.D. 136, 151 (E.D.Pa. 2000); In re Residential Doors, 1998 WL 151804, at 11.

The Court further notes that no member of the class objected to the expense reimbursement sought by plaintiffs' counsel, and the request for reimbursement of expenses will be approved.

An appropriate Order follows.

Clarence C. Newcomer, S.J.