

**Civil District Court for the Parish of Orleans  
STATE OF LOUISIANA**

No: 2001 - 20605

Division/Section: D-12

CLABORNE, JANICE ET AL  
versus  
THE HOUSING AUTHORITY OF NEW ORLEANS ET AL

Date Case Filed: 12/14/2001

**NOTICE OF SIGNING OF JUDGMENT**

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In accordance with Article 1913 C.C.P., you are hereby notified that Judgment  
in the above entitled and numbered cause was signed on July 2, 2020

New Orleans, Louisiana  
July 2, 2020

  
MINUTE CLERK

**CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS**

**STATE OF LOUISIANA**

**NO.: 2001-20605**

**DIVISION: D**

**JANICE CLABORNE, ET AL**

**VERSUS**

**THE HOUSING AUTHORITY OF NEW ORLEANS**

**FILED: \_\_\_\_\_**

**DEPUTY CLERK**

**JUDGMENT ON ATTORNEYS' FEES AND COSTS  
FOR CLASS ACTION PARTIAL SETTLEMENT**

This matter came before this Honorable Court for on May 27, 2020 for final approval of the proposed class action partial settlement ("Partial Settlement") entered into by and between Janice Claborne, Almarita Bush, Clementine Williams, Lisa Henderson, Monya Cheneau, Michelle George, Rhonda Parquette, Demetris Ramee, and Shantale Travis (collectively, with all members of the previously-certified Partial Settlement Class, the "Plaintiffs") and Canal Indemnity Company, Jefferson Insurance Company, Odyssey Re (London) Limited, f/k/a Sphere Drake Insurance, PLC, and Scottsdale Insurance Company (the "Settling Insurers") pursuant to the Partial Class Action Settlement and Release (the "Agreement"),<sup>1</sup> at which time the Court took up the matter of attorneys' fees and common benefit litigation costs in connection with same.<sup>2</sup>

The Court entered judgment granting final approval of the Partial Settlement in this matter on June 18, 2020 ("Final Order and Judgment Approving Class Action Partial Settlement").<sup>3</sup> Considering the pleadings; the entire record; the Notice provided to the Partial

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<sup>1</sup> Unless defined herein, all capitalized terms in this Judgment shall have the respective meanings ascribed to the same terms in the Agreement.

<sup>2</sup> Present for the "Final Approval Hearing" were counsel for: Plaintiffs (Darlene M. Jacobs; Terrill W. Boykin; Thomas E. Loehn; Kristie T. Utley, James Watkins); the Housing Authority of New Orleans ("HANO") (Wayne J. Lee and Heather Lonian); Scottsdale (Mark L. Hanover and Glenn B. Adams); Penn-America Insurance Company ("Penn-America") (David Bordelon); Canal (Elizabeth O. Clinton); Jefferson (Julie Dietz); Odyssey Re: (Daniel M. Redmann); Guste Homes Resident Management Corporation ("Guste") (Kim Boyle, Brandon Davis, Dennis Phayer, Warren Horn, Ike Spears, Diedre Pierce; and B.W. Cooper Resident Management Corporation ("B.W. Cooper") (Dennis Phayer); and Special Master for Administration of Partial Settlement Funds (Bruce C. Dean).

<sup>3</sup> A copy of the Settlement Agreement was attached as Exhibit A to the Final Order and Judgment Approving Class Action Partial Settlement. In the Final Order and Judgment, the Court—for settlement purposes—confirmed the preliminary appointment of class counsel as Class Counsel to the Partial Settlement Class.

Settlement Class; the evidence and the testimony; the argument of counsel; the lack of any objection to the fairness, reasonableness, or adequacy of the proposed Partial Settlement; the Court's own knowledge; the reasons orally assigned in open court and set forth in the Court's written Final Order and Judgment Approving Class Action Partial Settlement, and the Court's written Reasons for Judgment with respect to this Judgment; as well as the law and evidence being in favor thereof,

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that the Court awards the sum of forty percent (40%) of the Settlement Account as a reserve for attorneys' fees for the Plaintiffs' Legal Committee and any individual attorneys representing Partial Settlement Class Members. The payment of the Settlement Sums by the Settling Insurers shall be made pursuant to the terms of the Settlement Agreement and are not owed until thirty (30) business days after the Effective Date as set forth in the Agreement;

**IT FURTHER IS ORDERED** that the Court awards the sum of ten percent (10%) out of the Settlement Account as a reserve for costs associated with the Partial Settlement expended by the Plaintiffs' Legal Committee and any individual attorneys. The approval and payment of specific costs shall be deferred and considered at a later time, upon application of the attorneys.

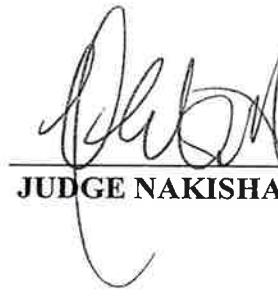
**IT IS FURTHER ORDERED** that a copy of this Judgment be published on the HANO Mold Website.

**IT IS FURTHER ORDERED** that this Judgment shall constitute and is hereby designated a final judgment for immediate appeal, pursuant to La. Code Civ. Proc. Art 1915(B)(1), as the Court expressly determines that there is no just reason for delay; and

**IT IS FURTHER ORDERED** that without affecting the finality of this Order, the Court shall retain full jurisdiction and authority over the subject matter of this action and all Non-Settling Parties for all purposes. The Court shall also retain jurisdiction and authority over the Partial Settlement Class and Class Representatives on all issues not expressly included in this Judgment including, without limitation, jurisdiction to enter any necessary orders relating to: (1) allocation and distribution of the Settlement Account and related orders; (2) interim payments of costs and litigation expenses; (3) claims and the claims process; and (4) division and distribution of attorneys' fees and allocation and distribution of costs, if necessary. Notwithstanding the above, under no circumstances will the Settling Insurers be required to fund any additional monies with regard to this litigation in excess of the amounts of the Settlement Account as set

forth in the Settlement Agreement and in the Final Order and Judgment Approving Class Action Partial Settlement. Reversal or modification on appeal of this Judgment shall not affect the finality of the Final Order and Judgment Approving Class Action Partial Settlement as it relates to the Settling Insurers and the Releasing Parties (as defined in the Agreement) and/or constitute grounds for cancellation or termination of the Agreement.

Read, rendered and signed at New Orleans, Louisiana, this 2nd day of July, 2020.

  
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**JUDGE NAKISHA ERVIN-KNOTT**



**CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS**

**STATE OF LOUISIANA**

**NO. 2001-20605**

**DIVISION: D-12**

**JANICE CLABORNE, et al.**

**VERSUS**

**THE HOUSING AUTHORITY OF NEW ORLEANS, et al.**

**FILED: \_\_\_\_\_**

**DEPUTY CLERK**

**REASONS FOR JUDGMENT ON ATTORNEYS' FEES AND COSTS  
FOR CLASS ACTION PARTIAL SETTLEMENT**

This matter came before the Court on May 27, 2020 for final approval of a proposed class action partial settlement (“Partial Settlement”) entered into by and between Janice Claborne, Almarita Bush, Clementine Williams, Lisa Henderson, Monya Cheneau, Michelle George, Rhonda Parquette, Demetris Ramee, and Shantale Travis (collectively, with all members of the previously-certified Partial Settlement Class, the “Plaintiffs”) and Canal Indemnity Company, Jefferson Insurance Company, Odyssey Re (London) Limited, f/k/a Sphere Drake Insurance, PLC, and Scottsdale Insurance Company (the “Settling Insurers”) pursuant to the Partial Class Action Settlement and Release (the “Agreement”),<sup>1</sup> at which time the Court took up the matter of attorneys’ fees and common benefit litigation costs in connection with same. The Court entered judgment granting final approval of the Partial Settlement in this matter on June 18, 2020 (“Final Order and Judgment Approving Class Action Partial Settlement”).<sup>2</sup>

The Court awards 50% of the Settlement Account (40% for fees and 10% for costs) as a reserve for fees and costs for Plaintiffs’ Legal Committee and individual attorneys for the following reasons:

Louisiana Code of Civil Procedure article 595(A) provides that in a class action, such as this, the Court may allow the representative parties their “reasonable expenses of litigation, including attorneys’ fees, when as a result of the class action a fund is made available, or a recovery or

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<sup>1</sup> Unless defined herein, all capitalized terms in this Judgment shall have the respective meanings ascribed to the same terms in the Agreement.

<sup>2</sup> A copy of the Settlement Agreement was attached as Exhibit A to the Final Order and Judgment Approving Class Action Partial Settlement. In the Final Order and Judgment, the Court—for settlement purposes—confirmed the preliminary appointment of class counsel as Class Counsel to the Partial Settlement Class.

compromise is had which is beneficial, to the class... " The Louisiana Supreme Court has listed ten factors (the "Williamson/Rivet factors") which courts should consider in determining the reasonableness of attorneys' fees in a class action:

- (1) the ultimate result obtained;
- (2) the responsibility incurred;
- (3) the importance of the litigation;
- (4) the amount of money involved;
- (5) the extent and character of the work performed;
- (6) the legal knowledge, attainment, and skill of the attorneys;
- (7) the number of appearances involved;
- (8) the intricacies of the facts involved;
- (9) the diligence and skill of counsel; and
- (10) the court's own knowledge.<sup>3</sup>

Applying these guidelines and specifically the first four factors, Class Counsel has been working on this class action mold exposure case for 19 years. The Agreement was arrived at as a result of arms-length negotiations conducted in good faith by experienced attorneys familiar with the legal and factual issues of the case and was supported by Plaintiffs and Class Counsel. The Court approved the Settlement in light of the complexity, expense, and duration of litigation, and the risks involved in establishing liability and damages and in maintaining the class action through trial and appeal. A good result has been produced with this Partial Settlement, especially in light of the uncertainty of Plaintiffs' success created by the various mold exclusions which appear in the Settling Insurers' policies.<sup>4</sup> The Settling Insurers have agreed to pay the total collective amount of \$3.76 million, which has

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<sup>3</sup> Most of these factors overlap with Rule 1.5 of the Louisiana Rules of Professional Conduct regarding reasonableness of attorney's fee awards. *See State, Dep't of Transp. & Develop. v. Williamson*, 597 So. 2d 439, 442 (La. 1992) (listing ten factors to consider in determining the reasonableness of attorneys' fees); *Vela v. Plaquemines Parish Gov'l*, 2000-2221 at 25-26, 811 So. 2d at 1280 (class action, quoting *Rivet v. State*, 96-0145, pp. 11-12 (La. 9/5/96), 680 So. 2d 1154, 1161) (citations omitted).

<sup>4</sup> As set forth in the Final Order and Judgment Approving Class Action Partial Settlement, neither the Agreement nor the Settlement contained therein, nor any act performed or document executed pursuant to or in furtherance of the Settlement: (a) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Settled Claim, or of any wrongdoing or liability of the Settling Insurers; or (b) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of any of the Settling Insurers in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal. The Settling Insurers have denied and continue to deny all of the claims asserted by Plaintiffs.

been approved by the Court. Although this total Settlement Sums amount is not insignificant, a 40% attorneys' fee amount will not result in a "windfall" to the Plaintiffs' attorneys. Class Counsel has taken on the sole legal and financial responsibility for this litigation, as it relates to the Plaintiffs, over the past 19 years. These attorneys financed the case, and were personally at risk of forfeiting those costs and the value of their time if the case had been lost. Class Counsel managed the case and the Partial Settlement Class for many years. The responsibility incurred was great, both financially and professionally. The litigation was very important to the Partial Settlement Class members, who likely would not have instituted individual actions because of the relatively small amount of damages and the extraordinarily high costs of litigation.

Turning to the next five factors, this litigation required skill to perform the legal services properly. Class Counsel appeared in this Court for scores of hearings and status conferences over the past 19 years. Counsel also represented the Partial Settlement Class during class certification and its appeal through both the Louisiana Fourth Circuit Court of Appeal and the Louisiana Supreme Court. Multiple depositions, written discovery, and document production have taken place throughout the past 19 years, as well as client interviews, site inspections, and meetings. The Plaintiffs' Legal Committee also had to keep in touch with the Partial Settlement Class members during the course of the litigation and locate many of them following Hurricane Katrina. Motion practice in this matter has been significant, including a motion for summary judgment regarding the application of a mold exclusion under the Scottsdale Policy, which could have ended Scottsdale's involvement in this case. Class Counsel has represented to the Court that more than one hundred thousand hours have been expended by Class Counsel thus far in over 19 years of litigation. A high level of legal skill was required to properly represent the Partial Settlement Class. While devoting thousands of hours to this litigation, Class Counsel were unable to accept other potentially deserving cases or had to delay work on other matters.

With respect to the last factor, this Court has personal knowledge of the work performed by Class Counsel, and is aware of their experience, reputation, and ability. From its review of the pleadings and motions filed by Class Counsel, their arguments at hearings and status conferences, and the Court's personal knowledge of the difficult legal issues confronting Class Counsel, this Court is in a unique position to assess the work of the Plaintiffs' Legal Committee. More specifically, this Court has personal knowledge of the risks involved, which included potential coverage

exclusions contained within the policies of the Settling Insurers.

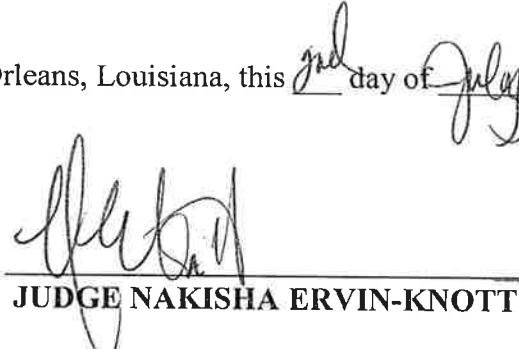
There are numerous Louisiana class action decisions which have approved attorneys' fees of 40 percent of the common fund at issue.<sup>5</sup> Many of those cases involved less complex, and less time-consuming litigation than this case. For the foregoing reasons, a fee of forty percent (40%) is warranted in this matter.

At the Final Approval Hearing, Class Counsel submitted evidence of the amount of litigation expenses incurred by them to date, which exceeded ten percent (10%) of the Settlement Account. As mentioned, under Louisiana Code of Civil Procedure article 595, Class Counsel may be awarded their reasonable expenses of litigation. A fifty percent (50%) allocation for fees and costs has been generally accepted as the norm in Louisiana for class action settlements.<sup>6</sup> Accordingly, the Court awards a ten percent (10%) reserve out of the Settlement Account for the costs of Class Counsel and individual attorneys.

### CONCLUSION

Accordingly, this Court approves a reserve of fifty percent (50%) of the Settlement Account (40% for fees and 10% for costs) for fees and costs for Plaintiffs' Legal Committee and individual attorneys.

Read, rendered and signed at New Orleans, Louisiana, this 10 day of July, 2020.

  
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JUDGE NAKISHA ERVIN-KNOTT

<sup>5</sup> *In re Ingram Barge Co.*, No. 97-226 "A" No. 97-226 (M.D. La. July 25, 2000) (Doc. No. 4060 at 5) (approving 40% attorneys' fee on gross settlement corpus for unrepresented claimants); *Gail M Clement v. Occidental Chem. Corp.*, No. 42,624 (La. 29th Jud. Dist. Ct. for the Parish of St. Charles) (awarding 40% attorneys' fees); *Dezon McGee v. Shell Oil Co.*, No. 41,315 (La. 29th Jud. Dist. Ct. for the Parish of St. Charles) (awarding 40% attorneys' fees); *Arthur Hamson v. Union Carbide Corp.*, No. 44,226 (La. 29th Jud. Dist Ct. for the Parish of St. Charles) (awarding 40% attorneys' fees); *Moms Larche v. Koch Nitrogen Co.*, No. 44,840 (La. 29th Jud. Dist. Ct. for the Parish of St. Charles) (awarding 40% attorneys' fees); *In re Chippewa Street Spill*, No. 450,957 (La. 19th Jud. Dist. Ct. for the Parish of E. Baton Rouge) (awarding 40% attorneys' fees); *Pedeaux v. Ga. Gulf Corp.*, No. 01-349 (M.D. La.) (Doc. No. 97 at 4) (approving 40% attorneys' fee); *Cavalier v. Mobil Oil Corp.*, No. 98-1817 (La. Civ. Dist. Ct. for the Parish of Orleans) (approving 40% attorneys' fees); *In re Eunice Tram Derailment*, No. 00-1267 (W.D. La.) (Doc. No. 124 at 7) (approving 40% common benefit attorneys' fees); *West v. G.H. Seed Co.*, No. 99-4984 (La. 27th Jud. Dist. Ct.) (approving 40% attorneys' fee); *Atkins v. Harcross Chems., Inc.*, No. 89-23976 (La. Civ. Dist. Ct. for the Parish of Orleans) (approving 40% attorneys' fees); *Rose Goudeau v. Administrators of the Tulane Educ. Funds*, No. 2004-04758 (La. Civ. Dist. Ct. for the Parish of Orleans) (Landrieu, J.) (approving 40% attorneys' fees); *In re New Orleans Tank Car Leakage Fire Litigation*, No. 87-16374 (La. Civ. Dist. Ct. for the Parish of Orleans) (Burns, J. ad hoc) (approving 40% attorneys' fees in each of three separate settlements totaling \$447 million); *Casey Billieson et al. v. City of New Orleans*, No. 94-19231 (Civ. Dist. Ct. for the Parish of Orleans) (Tiemann, J. ad hoc) (approving 40% attorneys' fees in class action settlement).

<sup>6</sup> See *In re Bayou Sorrel Class Action*, 2006 U.S. Dist. LEXIS 80924.