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**UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF NEW JERSEY**

| | |
|---|---|
| MATTIE HALLEY, SHEM ONDITI, LETICIA MALAVÉ and SERGIO de la CRUZ, On Behalf of Themselves and All Others Similarly Situated,<br><br>Plaintiffs,<br><br>-against-<br><br>HONEYWELL INTERNATIONAL, INC. and PPG INDUSTRIES, INC.,<br><br>Defendants. | Civil Action No. 2:10-cv-3345 (ES)(JAD)<br><br>*Document electronically filed.*<br><br>**CLASS COUNSEL'S MOTION SEEKING AN AWARD OF REASONABLE COSTS, ATTORNEYS' FEES AND INCENTIVE AWARDS** |

Pursuant to Federal Rules of Civil Procedure Rule 23(h) and 54(d)(2), plaintiffs, by and through undersigned counsel, respectfully move this Court for an order approving Class Counsel's Motion Seeking an Award of Reasonable Costs, Attorneys' Fees and Incentive Awards. Plaintiffs seek an order, in connection with and contingent upon the final approval of the proposed Class Action Settlement Agreement, that (1) awards reasonable attorneys' fees of $2,504,250; (2) approves reimbursement of litigation costs to Class Counsel in the amount of $1,191,174.67; and (3) approves $20,000 in incentive awards ($10,000 each) for the two named Class Representatives, Sergio de la Cruz and Shem Onditi. All payments will be paid from the common fund established in this Settlement. Honeywell does not oppose the award sought in this Motion.

As set forth in Class Counsel's Memorandum in Support of this Motion and Declaration of Steven J. German, filed in support, the fee award sought equates to 25% of the $10,017,000 common fund obtained by Class Counsel under the Settlement and results in a negative lodestar multiplier. Consistent with the percentage-of-recovery method favored by this Circuit, this percentage is well within the accepted range in this Circuit and is fully supported by a lodestar cross-check multiplier deemed reasonable by this Court.

Class Counsel should also be awarded reimbursement of reasonable litigation costs incurred in this matter. Class Counsel advanced $1,191,174.67 in reasonable and necessary litigation costs in pursuing their claims on behalf of Classes A and C. As explained more fully in Class Counsel's Memorandum in Support of this Motion and Declaration of Steven J. German, where PPG-specific expenses were incurred, Class Counsel do not seek reimbursement of those expenses from the Honeywell common fund.

Class Counsel further seek this Court's approval of $20,000 in total incentive awards for the Class Representatives and identified plaintiffs. These awards are justified under the circumstances, and the amount of incentive awards sought is an appropriate and reasonably calculated payment for services provided in developing and prosecuting the case.

WHEREFORE, plaintiffs respectfully request that this Court enter an Order approving the award of attorneys' fees, reasonable costs and incentive awards as requested herein.

A proposed order is attached.

Dated: June 1, 2015

Respectfully submitted,

s/ Steven J. German

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**UNITED STATES DISTRICT COURT**
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| MATTIE HALLEY, SHEM ONDITI, LETICIA MALAVÉ and SERGIO de la CRUZ, On Behalf of Themselves and All Others Similarly Situated,<br><br>Plaintiffs,<br><br>-against-<br><br>HONEYWELL INTERNATIONAL, INC. and PPG INDUSTRIES, INC.,<br><br>Defendants. | Civil Action No. 2:10-cv-3345 (ES)(JAD)<br><br>*Document electronically filed.* |

**MEMORANDUM IN SUPPORT OF CLASS COUNSEL'S MOTION SEEKING AN AWARD OF REASONABLE COSTS, ATTORNEYS' FEES AND INCENTIVE AWARDS**

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## I. INTRODUCTION

Defendants' generation of, disposal of and failure to properly remediate hexavalent chromium at over 100 contaminated sites and on private properties in Jersey City remains a significant environmental problem. It has been the subject of numerous federal and state lawsuits, administrative proceedings and enforcement actions and extensive lobbying efforts by the chromium polluters and chemical industry, including defendants PPG and Honeywell. The partial settlement of this class action, which has been preliminarily approved by this Court, represents the first opportunity for residential property owners who have been adversely affected by hexavalent chromium pollution in Jersey City to be compensated.

After five years of litigation, Class Counsel have secured a meaningful settlement on behalf of owners of property located in Class Areas A and C. Their homes are situated proximate to Honeywell's hexavalent chromium waste disposal sites in Disposal Area A. The settlement provides cash payments from a common fund to the owners of 1-4 family residential property in these Class Areas who alleged that Honeywell's generation of, disposal of and failure to remediate chromate waste in Disposal Area A and on properties in Class Areas A and C interfered with their use and enjoyment of property and caused a diminution in their property value. The settlement also provides for Honeywell to fund a community project with up to $100,000 of any unclaimed funds, which will benefit the health, environmental, educational or recreational interests of the Settlement Classes. The settlement proceeds seamlessly with Honeywell's prior, Court-ordered obligation to remediate the chromium waste sites in Disposal Area A. The settlement does not resolve any personal injury or medical monitoring claims, or the claims of owners of property other than 1-4 family residential property. Finally, the settlement allows the Class B plaintiffs whose homes are situated near PPG's former chromate

production facility and chromate waste disposal sites in Disposal Area B to continue litigating their claims against PPG.

Class Counsel respectfully move the Court for an award of reasonable attorneys' fees and costs totaling $3,715,424.67 consisting of $2,504,250 in attorneys' fees, $1,191,174.67 in costs and $20,000 in incentive awards ($10,000 each) for the two named Class Representatives, Sergio de la Cruz and Shem Onditi.[1] Consistent with the percentage-of-recovery method favored by this Circuit, the $2,504,250 fee award sought equates to 25% of the $10,017,000 common fund obtained by the Classes under the settlement and results in a negative lodestar multiplier. *See* Declaration of Steven J. German in Support of Class Counsel's Motion Seeking an Award of Reasonable Costs, Attorneys' Fees and Incentive Awards, ¶¶ 46 and 47 (hereinafter "German Decl."). This percentage is well within the accepted range in this Circuit and well below the lodestar cross-check multiplier deemed reasonable by this Court. In addition, pursuant to the Settlement Agreement (Doc. No. 367), and based on estimates provided by the Claims Administrator, the Garden City Group, administration expenses of approximately $100,000 to $120,000 will be paid from the common fund. German Decl. ¶ 7. Honeywell does not oppose the award sought in this Motion. Doc. No. 367-2, p. 19.

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[1] As described more fully at pp. 24-25, *infra*, when, as here, a class action settlement is reached with fewer than all defendants, the district court may exercise discretion in allocating fees and costs. As the Court knows, this case involved numerous allegations of joint and several liability, including Civil Conspiracy. As such, the case was litigated in a manner such that the overwhelming majority of time and costs were expended jointly to advance the claims of Classes A, B and C. Where PPG-specific expenses were incurred after the settling parties notified the Court of their settlement in principle, Class Counsel do not seek reimbursement of those expenses from the Honeywell common fund. We reserve our right to seek reimbursement for such expenses should the Class B case against PPG resolve to the benefit of the plaintiffs. At such time, based on an allocation formula approved by the Court, Class Counsel may perform a second distribution of expenses to the Class A and C plaintiffs based on a recovery from PPG. Any future recovery against PPG would be on behalf of Class B members.

## II. HISTORY OF LITIGATION AND WORK PERFORMED

A. Development and Prosecution of Plaintiffs' Claims

This case involves allegations that Honeywell and PPG generated, released, improperly disposed of and failed to properly remediate large quantities of hexavalent chromium contamination at numerous Chrome Ore Processing Residue ("COPR") waste disposal sites ("COPR sites") and Class Areas in the heart of Jersey City, New Jersey, thereby causing plaintiffs to suffer damage to their properties, loss of use and enjoyment of their properties and diminution in property value. Litigation commenced on May 17, 2010, when plaintiffs filed a complaint in Hudson County Superior Court. German Decl. ¶ 27. PPG promptly removed the case to the District of New Jersey. *Id.* ¶ 28. Honeywell filed a Motion to Dismiss, which was extensively briefed. *Id.* ¶ 29. The Court granted Honeywell's motion in part, dismissing plaintiffs' claim for unjust enrichment, but denied all other bases for dismissal, including statute of limitations. *Id.* Honeywell filed a Motion for Reconsideration, which also was extensively briefed and ultimately denied. *Id.*

In August 2011, the parties began discovery in earnest. *Id.* ¶ 30. Fed. Civ. P. Rule 26 disclosures were exchanged. *Id.* Defendants served their First Set of Interrogatories and Requests for Production on plaintiffs, and plaintiffs served their First Set of Interrogatories and Requests for Production of Documents on defendants. *Id.* In response to plaintiffs' Requests for Production of Documents and Interrogatories, Honeywell produced greater than 2,500,000 pages of documents in 23 separate rolling productions between September 2011 and June 2014. *Id.* PPG produced greater than 2,500,000 pages of documents in 14 separate rolling productions. Many of these documents consisted of highly technical environmental reports such as remedial investigation and interim remedial measure reports, sampling data and scientific studies. *Id.* At the time of settlement, an untold number of additional documents remained outstanding from

defendants. *Id.* During the course of the litigation the parties exchanged additional Interrogatories, Requests for Production and Requests for Admission. *Id.* In 2013, defendants began a rolling production of their respective privilege logs. Honeywell's privilege logs contained 6,054 entries and PPG's privilege logs contained 35,433 entries. *Id.* ¶ 31.

Plaintiffs and defendants collectively issued 69 subpoenas for document productions or depositions on non-parties and environmental consultants including Mike McCabe, the Site Administrator for the PPG sites; Dr. Michael Gochfeld of Rutgers University; the University of Medicine and Dentistry of New Jersey and the Environmental Occupational Health Studies Institute; the New Jersey Department of Environmental Protection ("NJDEP"); the University of Connecticut; environmental contractors AECOM, Weston Solutions, Emilcott, AMEC and Dresdner Robin; public relations consultant Jeff Worden; developer K. Hovnanian; and numerous real estate appraisers and mortgage companies. Those efforts produced hundreds of thousands of additional documents and corresponding assertions of privilege. *Id.* ¶ 32.

The parties appeared for 33 days of deposition: 19 noticed by plaintiffs and 14 noticed by defendants. Depositions were taken of the class representatives, employees of NJDEP, doctors and scientists, party witnesses and 30(b)6 deponents, Mr. McCabe and his professionals, environmental contractors and environmental consultants. *Id.* ¶ 33.

The parties appeared for 23 court conferences: 12 in person and 11 telephonically. *Id.* ¶ 34. The Court issued numerous Scheduling Orders, which, due to the complexity and magnitude of the case, were periodically amended and deadlines extended. *Id.*

Class Counsel consulted and/or retained numerous experts in highly technical fields such as environmental science, medicine, toxicology, chromium toxicity, risk assessment, geochemistry, air modeling, forensic reconstruction, economics and property valuation. *Id.* ¶ 35.

Offensive discovery in this case was hard fought – an "arduous" undertaking requiring extensive "letter-writing, e-mail exchange, debate and conferring." *Id.* ¶ 36, quoting Doc. No. 152, at p. 1. Plaintiffs faced three Motions to Quash and Protective Orders. *Id.* ¶ 36. Discovery disputes concerning the permissible scope of class phase discovery, the completeness of defendants' responses, confidentiality, cost-shifting and privilege resulted in numerous meet-and-confers, letter-writing, briefing, motion practice, argument and the successful appeal to the District Judge of Magistrate Judge Dickson's May 20, 2014 discovery ruling on several important issues. *Id.*

Defensive discovery was also burdensome. Plaintiffs faced a coordinated assault by PPG and Honeywell into discovering plaintiffs' paper records, computer files, internet search history, text messages, financial records and interpersonal communications. *Id.* ¶ 37. The Class Representatives appeared for lengthy and sometimes difficult and emotional multi-day depositions. *Id.* In addition, the Court ordered Class Counsel to create a privilege log of all of their client intake questionnaires and all communications between counsel and *any* putative class member. *Id.*

As the case progressed and new information came to light during discovery, plaintiffs amended their Complaint four times in an effort to narrow the scope of the litigation to focus on defendants' primary waste Disposal Areas. *Id.* ¶ 39. The Complaint was also amended twice to conform the Class definitions to the Settlement Agreement and other agreements of the parties as a result of the Settlement. *Id.* These amendments were not always by consent and required plaintiffs to brief Motions for Leave to Amend. *Id.*

B. The Settlement

After four days of intense mediation, plaintiffs and Honeywell reached a settlement in principle on July 14, 2014, shortly before the close of class phase discovery and plaintiffs' expert

disclosures. *Id.* ¶ 17. On July 15, 2014, the settling parties advised the Court of their agreement in principle. *Id.* ¶ 18. On November 7, 2014, Honeywell and plaintiffs filed their Joint Motion for Preliminary Approval of Class Action Settlement. *Id.* ¶ 19.

Pursuant to the Settlement Agreement, Honeywell agrees to provide cash payments to the Settlement Class Members. Doc. No. 367. On May 1, 2015, the Court issued an Order Certifying the Settlement Class, Preliminarily Approving the Class-Action Settlement and Approving the Form and Manner of Notice. German Decl. ¶ 19. Pursuant to the Settlement Agreement, notice to the Classes will be mailed, published in a local newspaper and posted on a website beginning June 1, 2015. *Id.* ¶ 20. Personnel of the Settlement Claims Administration firm Garden City Group will also be available for telephonic consultations. *Id.* The time period for objecting, opting out and/or filing a claim will expire in 60 days. *Id.* A Fairness Hearing is scheduled for September 24, 2015 at 11:00 a.m. Doc. No. 390.

## III. THE ATTORNEY FEES SOUGHT ARE REASONABLE AND SHOULD BE AWARDED

### A. The *Gunter* Factors

Applications for the award of attorneys' fees and expenses on behalf of Class Counsel are submitted pursuant to Fed. R. Civ. P. 23(h), which provides: "In a certified class action the Court may award reasonable attorneys' fees and nontaxable costs that are authorized by law or by the parties' agreement." *See In re Diet Drugs (Phen Fen) Prod. Liab. Litig.*, 582 F.3d 524 (3rd Cir. 2009); *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 300 n.7 (3d Cir. 2005). This Circuit authorizes the use of the percentage of recovery method to determine the reasonableness of attorneys' fees in common fund class action cases, such as this one. *See Sullivan v. DB Investments, Inc.*, 667 F.3d 273, 330 (3d Cir. 2011) (citations and internal quotations omitted); *In re AT&T Corp.*, 455 F.3d 160, 164 (3d Cir. 2006); *In re Cendant Corp. PRIDES Litig.*, 243 F.3d

722, 734 (3d Cir. 2001) ("The percentage-of-recovery method has long been used in this Circuit in common-fund cases."); *In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 333 (3d Cir. 1998) ("The percentage-of-recovery method is generally favored in cases involving a common fund, and is designed to allow courts to award fees from the fund 'in a manner that rewards counsel for success and penalizes it for failure.'") (citation omitted); *In re Ins. Brokerage Antitrust Litig.*, 297 F.R.D. 136, 153 (D.N.J. 2013) ("The percentage-of-recovery method is used in common fund cases, as courts have determined that 'class members would be unjustly enriched if they did not adequately compensate counsel responsible for generating the fund.'"); *Dewey v. Volkswagen of Am.*, 728 F. Supp. 2d 546, 592 (D.N.J. 2010) *rev'd and remanded sub nom. Dewey v. Volkswagen Aktiengesellschaft*, 681 F.3d 170 (3d Cir. 2012); *Varacallo v. Massachusetts Mut. Life Ins. Co.*, 226 F.R.D. 207, 248-49 (D.N.J. 2005); *In re AremisSoft Corp. Sec. Litig.*, 210 F.R.D. 109, 128-29 (D.N.J. 2002).

The Third Circuit has articulated seven factors for evaluating the reasonableness of a fee request: "(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); *Kirsch v. Delta Dental of New Jersey*, 534 F. App'x 113, 116-17 (3d Cir. 2013); *Sullivan*, 667 F.3d at 330; *In re AT&T Corp.*, 455 F.3d at 165; *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d at 301. Additional factors that may be considered include the "*Prudential* factors": (1) the value of benefits accruing to class members attributable to the efforts of class counsel as opposed to the efforts of other groups, such as government agencies

conducting investigations, (2) the percentage fee that would have been negotiated had the case been subject to a private contingent fee agreement at the time counsel was retained, and (3) any "innovative" terms of settlement. *In re AT&T Corp.*, 455 F.3d at 165; *citing In re Prudential Ins. Co.*, 148 F.3d 338-40. Here, each of the "*Gunter* factors," as well as the discretionary "*Prudential* factors," supports granting plaintiffs' request for attorneys' fees and costs.

(1) <u>The Size of the Fund Created is Significant and Benefits Many Property Owners.</u>

Settlement is necessarily a "compromise, a yielding of absolutes and an abandoning of highest hopes in exchange for certainty and resolution." *Sullivan*, 667 F.3d at 324 (quoting *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Products Liab. Litig.*, 55 F.3d 768, 806 (3d Cir. 1995); *Varacallo*, 226 F.R.D. at 235. Accordingly, a settlement is not judged against what might have been recovered had the plaintiff prevailed at trial, nor does the settlement have to provide 100% of the potential recovery to be fair and reasonable. *See In re Ins. Brokerage Antitrust Litig*., 282 F.R.D. 92, 105 (D.N.J. 2012). Furthermore, a court should also consider "whether the plaintiff's success 'also accomplished some public goal.'" *Jama v. Esmor Corr. Servs., Inc.*, 577 F.3d 169, 186 (3d Cir. 2009) (citing *Farrar v. Hobby*, 506 U.S. 103, 121-22 (1992) (O'Connor, J., concurring)).

Here, the settling Classes include approximately 3,400 properties, based on public property records. Consistent with the Settlement Agreement, members of the Classes must file proofs of claim no later than July 31, 2015 to receive settlement proceeds. Despite the complexity of this case, Class Counsel obtained a significant settlement of $10,017,000 providing the members of the Settlement Classes with meaningful compensation for their property damage claims. Doc. No. 367-2. Moreover, the Settlement achieves other public goals. It provides for Honeywell to fund a community project with up to $100,000 of any unclaimed

Settlement funds, which will benefit the health, environmental, educational or recreational interests of the Settlement Classes. *Id.* It, moreover, proceeds seamlessly with Honeywell's ongoing obligation to remediate its chromate disposal sites in Disposal Area A. In light of the large Settlement Class size and the substantial recovery, this factor weighs in favor of approving the requested fee.

(2) To Date There Has Been No Objection by Members of the Classes to the Terms of the Settlement or the Fees Requested by Counsel.

"The absence of substantial objections by Settlement Class members to the fees requested by Class Counsel strongly supports approval." *In re Ins. Brokerage Antitrust Litig.*, 297 F.R.D. at 154. "The "absence of large numbers of objections mitigates against reducing fee awards." *Yong Soon Oh v. AT & T Corp.*, 225 F.R.D. 142, 152 (D.N.J. 2004); *In re Cendant Corp., Derivative Action Litig.*, 232 F. Supp. 2d 327, 337-38 (D.N.J. 2002); *see also In re Rite Aid*, 396 F.3d at 305. Indeed, the Court of Appeals has stated that "silence constitutes tacit consent to the agreement" to the proposed fees. *In re Gen. Motors*, 55 F.3d at 812 (quoting *Bell Atl. Corp. v. Bolger*, 2 F.3d 1304, 1314 n.15 (3d Cir.1993)); *Dewey*, 728 F. Supp. 2d at 601. Although the Settlement has been public for over six months, as of the time of this filing plaintiffs are aware of no objections to the Settlement or the requested fees. However, since the time period for objecting does not expire until July 31, 2015, the Court may reserve judgment on this factor.

(3) The Attorneys Involved have Demonstrated their Outstanding Skill and Litigated this Complex Case Efficiently.

The complexity and demands of class actions as well as environmental claims often require unique legal skills and abilities from class counsel in addition to the skills and ability required in smaller cases. Those skills are called upon in order to litigate and successfully resolve a complex class action. *Sullivan*, 667 F.3d at 303. Moreover, "[e]nvironmental litigation

is an identifiable practice specialty that requires distinctive knowledge." *Love v. Reilly*, 924 F.2d 1492, 1496 (9th Cir. 1991).

This case presents complex questions of fact, such as the forensic reconstruction of defendants' chromate production facilities, modeling of the off-site migration of hexavalent chromium and the risks associated with exposure. It also involves complex questions of law such as class certification, statute of limitations and causation. Class Counsel, who vigorously prosecuted this complex case, were responsible for a successful outcome for the Class A and C plaintiffs. As set forth fully in the declaration of Steven J. German, the attorneys of German Rubenstein LLP, Janet Jenner & Suggs LLC and the National Legal Scholars Law Firm are highly capable and experienced attorneys in the areas of environmental, toxic tort and class action litigation and demonstrated their capabilities in this case. *See* German Decl. ¶ 41. Additionally, Kanner & Whitely, Williams Cuker & Berezofsky and Keith Altman participated in the prosecution of the case, providing additional expertise, experience and assistance on class action, toxic tort, environmental and e-discovery issues. *Id.* at FN. 3.

Class Counsel's skill and efficiency have been apparent throughout the case, and continue in our prosecution of the Class B case against PPG. We took great care to divide work in such a way that focused on each attorney's strengths, skill and experience, so as to resolve tasks efficiently and reduce duplication of effort. German Decl. ¶ 45. For instance, Mr. Janet and Mr. Suggs, both of whom have extensive experience managing complex cases, directed Class Counsel's efforts throughout the case. *Id.* Mr. Altman, who has extensive technical training and legal knowledge of e-discovery issues, led a small team of lawyers that was responsible for the conduct of offensive e-discovery depositions and numerous, contentious, defensive e-discovery matters. *Id.* Mr. Roisman, who has significant experience working with

technical experts, particularly in the environmental area, was active in the development of plaintiffs' expert case. *Id.* Mr. German led a team of lawyers, law clerks and paralegals who were responsible for discovery, document review and depositions. *Id.* Mr. German began litigating Jersey City chromium issues in this District in 1999 through the 2003 trial of *Interfaith Community Org. v. Honeywell* (95-cv-2097) (Cavanaugh, J.). His familiarity with the scientific and fact issues surrounding defendants' generation and disposal of chromium in Jersey City created great efficiencies in the management of this large and factually complex case.

Class Counsel demonstrated exceptional legal skill, tenacity and familiarity with the facts as evidenced by our legal arguments in successfully overcoming Honeywell's Motion to Dismiss on statute of limitations and reconsideration thereof, and the successful appeal to the District Judge of a Magistrate Judge's discovery ruling concerning the permissible scope of class phase discovery. We employed our skill and experience to control paper discovery and depositions that otherwise could have become unwieldy given the history of chromium in Jersey City and the sheer volume of paper, persons and institutions with relevant information. In addition, where appropriate, work was assigned to associates and paralegals with lower billing rates. *Id.* Perhaps most importantly, our skill and experience informed our expert work and allowed us to ultimately achieve this settlement.

This skill and experience has proven to be particularly important here because of the quality, skill and experience of defendants' counsel – a factor the Court may consider when evaluating the skill and efficiency of Class Counsel. *See In re Ins. Brokerage Antitrust Litig.*, 297 F.R.D. at 154 (considering defendants' attorneys high level of experience, prominent firms, and background in the relevant matters); *Hall v. AT & T Mobility LLC*, No. CIV.A. 07-5325 JLL, 2010 WL 4053547, at *19 (D.N.J. Oct. 13, 2010) ("The quality of opposing counsel is also

important in evaluating the quality of counsel's work."); *In re Datatec Sys., Inc. Sec. Litig.*, No. 04-CV-525 (GEB), 2007 WL 4225828, at *7 (D.N.J. Nov. 28, 2007) (taking into account that "Defendants were represented by highly skilled attorneys from a prominent firm with experience in these matters"). Here, defendants' attorneys are from prestigious, local and national law firms such as Gibbons P.C., LeClairRyan, Arnold & Porter LLP and Thompson Hine LLP. Each of these well-resourced firms has extensive experience in this Court and in defending environmental, class action and toxic tort cases. Moreover, LeClairRyan and Arnold & Porter have extensive experience in defending Jersey City chromium lawsuits in this District and addressing scientific, administrative and remedial issues associated with this waste in the state courts and with the NJDEP. They have counseled their respective clients for many years on related issues and thereby possess unique institutional knowledge and strategic advantages in litigating chromium cases.

The experience, reputation and ability of Class Counsel, coupled with their success "in the face of formidable legal opposition further evidences the quality of their work" and weighs strongly in favor of the requested fee. *See In re Corel Corp. Inc. Sec. Litig.*, 293 F. Supp. 2d 484, 496 (E.D. Pa. 2003).

(4) <u>The Litigation is Extremely Complex and of Long Duration.</u>

As demonstrated above, and in the attached Declaration of Steven J. German, this litigation was hard fought and complex. This case, originally filed on May 17, 2010, has been pending for over five years and is still in the class certification phase of litigation. From the outset, defendants defended the case vigorously. For instance, PPG promptly removed the case from New Jersey state court to this District in June 2010. German Decl. ¶ 27. Shortly thereafter, on July 30, 2010 Honeywell moved to dismiss the Complaint on statute of limitations grounds

and under Fed. R. Civ. P. 12(b)(6). *Id.* ¶ 29. Honeywell thereafter sought reconsideration of the Court's Order and Opinion denying is Motion. *Id.* The briefing on these issues was extensive. *Id.*

In August 2011 discovery began in earnest with the exchange of Fed. Civ. P. Rule 26 disclosures. More than 100 individuals and organizations with relevant knowledge were identified. *Id.* ¶ 30. The parties served Interrogatories, Requests for Production and Requests for Admission. Together defendants produced over 5,000,000 pages of documents in 37 separate rolling productions. *Id.* Many of these documents consisted of highly technical environmental reports, sampling data and scientific studies. *Id.* At the time of settlement, an untold number of additional documents remained outstanding from defendants. *Id.* Defendants also logged more than 41,000 assertions of privilege. *Id.* ¶ 31. In addition, the Court ordered plaintiffs to log all of their client intake questionnaires and all communications between counsel and putative class members, resulting in 926 assertions of privilege. *Id.* ¶ 37. Plaintiffs and defendants collectively issued 69 subpoenas for document productions or depositions on non-parties which together produced hundreds of thousands of additional documents, more assertions of privilege and days of deposition. *Id.* ¶ 32.

Plaintiffs faced three Motions to Quash and Protective Orders. *Id.* ¶ 36. Discovery disputes concerning the permissible scope of class phase discovery, the completeness of defendants' responses, confidentiality, cost-shifting and privilege resulted in numerous meet-and-confers, letter-writing, motions, briefing and court appearances, including an appeal and oral argument to the District Judge. *Id.*

The parties appeared for 33 days of deposition and 23 court conferences. *Id.* ¶¶ 33 and 34. The Court issued numerous Scheduling Orders, which, due to the complexity of the case, were periodically amended and deadlines extended. *Id.* ¶ 34.

Plaintiffs' counsel consulted and retained numerous experts in highly technical fields such as environmental science, medicine, toxicology, chromium toxicity, geochemistry, air modeling, forensic reconstruction, risk assessment, economics and property valuation. *Id.* ¶ 35.

The legal issues were equally complex. Plaintiffs would have faced numerous challenges had the case continued to trial. First, prior to reaching a settlement, the Court had not yet certified the case to proceed as a class action. Although many courts favor class certification of environmental claims, there is no guarantee that this Court would have certified all, or any, of plaintiffs' claims. Second, although plaintiffs survived a motion to dismiss on statute of limitations, defendants were likely to move for summary judgment on the issue of statute of limitation and causation. Here, for example, defendants have argued that the alleged presence of certain "background" levels of hexavalent chromium could be the source of hexavalent chromium on plaintiffs' properties. While Class Counsel believe our scientific proofs would have prevailed and demonstrated that defendants' massive amounts of chromium indeed invaded plaintiffs' property, our success was not guaranteed. *See*, *e.g.*, *In re Ins. Brokerage Antitrust Litig.*, 297 F.R.D. at 155; *In re Rite Aid*, 396 F.3d at 304 (considering "risks of establishing liability" in deciding fee award). Furthermore, had the case not settled against Honeywell, Honeywell likely would have raised at least some expert challenges pursuant to *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993).

Reaching a settlement was also difficult. Plaintiffs and Honeywell participated in three separate rounds of settlement negotiations. German Decl. ¶ 17. The first settlement discussions

began in 2011 and included all parties. *Id.* This attempt at an early resolution of the case was unsuccessful. *Id.* The settlement now before the Court resulted from two rounds of multi-day, complicated negotiations requiring the great effort and skill of an experienced mediator to bring the parties together to reach agreement. *Id.*

Several case features that courts have considered under this factor are present here including, "extensive discovery and motion practice" and the litigation being a "costly and lengthy process for all" (*In Re Brokerage Antitrust*, 297 F.R.D. at 154); "the volume of documents, the shifting factual sands that required several amended complaints, * * * the duration of the litigation, * * * and the necessity of resorting to mediation to reach a final settlement" (*In re Rite Aid*, 396 F.3d at 305); and "[c]omplicated settlement negotiations." *In re Lucent Technologies, Inc., Sec. Litig.*, 327 F. Supp. 2d 426, 434-35 (D.N.J. 2004). In light of these facts, this factor weighs heavily in favor of approving the requested award.

(5) <u>The Case Presented, and Continues to Present, a Significant Risk of Nonpayment.</u>

"Little about litigation is risk-free, and class actions confront even more substantial risks than other forms of litigation." *Teachers' Ret. Sys. v. A.C.L.N., Ltd.*, 2004 WL 1087261, at *3 (S.D.N.Y. May 14, 2004)). Class Counsel undertook this case on an entirely contingent fee basis, assuming a substantial risk that the litigation would yield no or potentially little recovery and leave us uncompensated for our significant investment of time, as well as our substantial expenses. This Court and others have consistently recognized that this risk is an important factor favoring an award of attorneys' fees. *In re Ins. Brokerage Antitrust Litig.*, 297 F.R.D. at 155 ("Courts recognize the risk of non-payment as a major factor in considering an award of attorney fees."); *In re Schering-Plough Corp. Enhance ERISA Litig.*, No. CIV.A. 08-1432 DMC, 2012 WL 1964451, at *7 (D.N.J. May 31, 2012) ("Courts routinely recognize that the risk created by

undertaking an action on a contingency fee basis militates in favor of approval."). An attorney is entitled to a larger fee when the compensation is contingent rather than being fixed on a time or contractual basis. *Pro v. Hertz Equip. Rental Corp.*, No. CIV.A. 06-3830 DMC, 2013 WL 3167736, at *6 (D.N.J. June 20, 2013) ("Courts have recognized that where counsel's compensation is contingent on recovery, a premium above counsel's hourly rate may be appropriate."); *see also Vizcaino*, 290 F.3d at 1051 (quoting *In re Washington Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1299-1300 (9th Cir. 1994) ("It is an established practice in the private legal market to reward attorneys for taking the risk of non-payment by paying them a premium over their normal hourly rates for winning contingency cases * * * as a legitimate way of assuring competent representation for plaintiffs who could not afford to pay on an hourly basis regardless whether they win or lose.")).

As previously demonstrated, plaintiffs would have faced numerous risks had the case continued to trial, including class certification, summary judgment, causation issues and *Daubert* challenges.

This case has been proceeding for over five years and Class Counsel have already devoted an enormous amount of time, money, and other resources to litigating it. Such a complicated case could span additional years and involve a lengthy, expensive trial and appeals that plaintiffs are not guaranteed to win. Due to these potential challenges, and others, the risk that plaintiffs could have recovered less, and possibly nothing, had a settlement not been reached weighs heavily in support of granting the requested fee.

(6) Plaintiffs' Counsel Have Devoted a Very Substantial Amount of Time to the Case.

As demonstrated above, the Class firms dedicated a substantial amount of time to the prosecution of the claims. To date the Class firms have devoted greater than 27,000 hours[2] to this case. German Decl. ¶ 40. We have incurred greater than $1,425,652.27 in litigation expenses to date, of which we presently seek reimbursement for $1,191,174.67. *Id.* ¶¶ 42-44. This is a substantial amount of time and money, but actually evidences an efficient approach to the litigation of a case that could easily have generated thousands more hours and dollars given the complex scientific and legal issues at play and the magnitude of discovery.

Class Counsel dedicated significant time to factual investigations, client communications and legal research even before filing this lawsuit. *Id.* ¶ 23. We worked extensively with scientific consultants and experts, both before filing the case, during discovery and in preparation for the exchange of class phase expert reports. *Id.* We invested over 10,000 hours in discovery, including managing, reviewing and analyzing documents from plaintiffs, defendants and non-parties; reviewing defendants' voluminous privilege logs and litigating privilege issues; defending, taking or otherwise participating in 37 days of depositions; and issuing and litigating non-party subpoenas. *Id.* ¶¶ 30-38. We committed thousands of additional hours to attending court conferences; arguing and briefing various substantive, procedural and discovery issues; narrowing the geographic scope of the case through several amendments to the Complaint; and developing our case through team meetings and strategy sessions. *Id.* ¶¶ 39 and 40. Furthermore, Class Counsel devoted significant time to the mediation and settlement of the Class A and C claims, including the preparation of voluminous settlement materials for the mediator,

[2] The Court may rely on time summaries submitted by the attorneys and need not review actual billing records. *In re Rite Aid*, 396 F.3d at 306-07. Upon request, however, Class Counsel will provide the detail of each firm's time and expenses for *in camera* inspection.

four days of mediation and our work with Honeywell and the Garden City Group to facilitate a smooth claims administration process. *Id.* ¶¶ 5 and 6. Our commitment continues in our ongoing case against PPG. Accordingly, the amount of time devoted to the case heavily favors approval of the requested fee.

(7) The Requested Fee Award Is Directly in Line with Awards in Similar Cases.

Though cautious not to rely too heavily on any particular formula or benchmark (*In re Elec. Carbon Products Antitrust Litig.*, 447 F.Supp. 2d 389, 408 (D.N.J. 2006)), "[m]any Courts, including several in the Third Circuit, have established 25% to be the benchmark figure for attorney fee awards in class action lawsuits, with adjustments up or down for significant case-specific factors." *In re Varacallo*, 226 F.R.D., at 249. *See also Yong Soon Oh.*, 225 F.R.D. at 153; *In re Ins. Brokerage Antitrust Litig.*, 297 F.R.D. at 155. ("Courts within the Third Circuit often award fees of 25% to 33% of the recovery.") (quotations omitted). When comparing the proposed fee award to similar cases, the court should "(1) compare the actual award requested to other awards in comparable settlements; and (2) ensure that the award is consistent with what an attorney would have received if the fee were negotiated on the open market." *In re Ins. Brokerage Antitrust Litig.*, 297 F.R.D. at 155.

In the New Jersey environmental case of *Rowe v. E.I. DuPont de Nemours & Co.*, this Court awarded a fee equal to 33.33% of the settlement fund, finding such an award reasonable once the skill of counsel, complexity of the issues, the risks shouldered by counsel, and customary fees in similar cases were considered. No. CIV. 06-1810 RMB/AMD, 2011 WL 3837106 (D.N.J. Aug. 26, 2011) (finding that 33.33% of attorneys' fees from an $8.3 million settlement fund was reasonable in light of the complexity of the case, the five years that the case

had been pending, 20,000 hours spent litigating, extensive motions practice, numerous areas of expertise required, and over fifty depositions taken).

In *Stanley v. U.S. Steel Co.*, No. 04-74654, 2009 WL 4646647 (E.D. Mich. Dec. 8, 2009), the Court awarded a 30% fee in an air pollution case due to the case's complexity, skill of counsel, and the four-year duration of the case. Likewise, in *Martin v. Foster Wheeler Energy Corp.*, No. 3:06-CV-0878, 2008 WL 906472 (M.D. Pa. Mar. 31, 2008) the Court awarded a 30% fee award in an environmental case involving approximately 147 plaintiffs and a $1,600,000 settlement fund. This Court, and others, has consistently awarded fees over 25% in class actions involving a smilar-sized fund. *E.g.*, *In re Ins. Brokerage Antitrust Litig.*, 297 F.R.D. 136 (33% of $10.5 million fund was reasonable); *In re Par Pharm. Sec. Litig.*, No. CIV.A. 06-3226 ES, 2013 WL 3930091 (D.N.J. July 29, 2013) (finding 30% award was acceptable for an $8.1 million settlement in securities fraud case); *Hall*, 2010 WL 4053547 (awarding 33.3% of an $18 million fund).

Here, despite the significant investment of time and money expended by Class Counsel for the prosecution of this case, Class Counsel's request of $2,504,250 equates to only 25% of the benefits received by members of the Settlement Classes. Under the circumstances presented by this case, an award of fees equating to 25% of the benefits achieved for the Settlement Classes is well within the range of awards in similar cases. Had Class Counsel been able to negotiate a fee contract with the members of the Classes at the outset of litigation, Counsel would have recognized that the expenses could easily exceed $1,000,000 with no guarantee of reimbursement and that thousands of hours could be expended with no recovery. As a result Class Counsel likely would have requested at least a 25% fee after reimbursement of all litigation expenses. This factor weighs heavily in favor of the requested fee award.

B. The *Prudential* Factors

The "*Prudential* Factors" are also relevant. First, all of the benefits accruing to the Classes are attributable to the efforts of Class Counsel and this litigation. To be sure, there have been numerous government investigations and attempts by administrative agencies to address chromium contamination in Jersey City. Importantly, however, none of these actions has resulted in money payments to the Classes. Indeed, government enforcement has been anemic since the NJDEP's earliest attempts to enforce chromium cleanups in the 1980's. Private lawsuits in this District have been the primary impetus for remediation of the chromium sites. This factor weighs heavily in favor of the award.

Second, as stated above, had Class Counsel been able to negotiate a fee contract with the members of the Classes at the outset of litigation, Class Counsel likely would have requested at least a 25% fee after reimbursement of all litigation expenses. This factor weighs in favor of the award.

Third, the Settlement also provides for Honeywell to fund a community project with up to $100,000 of any unclaimed funds, which will benefit the health, environmental, educational or recreational interests of these Classes. The value of benefits enjoyed by the community from this project will likely exceed its dollar value. Furthermore, the Settlement proceeds seamlessly with Honeywell's prior, Court-ordered, obligation to remediate the chromium waste sites in Disposal Area A. This factor may also be considered favorably in the Court's fee decision.

**Lodestar Cross-Check**

Although an analysis of counsel's lodestar is not required for an award of attorney fees in the Third Circuit, here a cross-check of the fee request with a lodestar demonstrates the reasonableness of plaintiffs' requested fee award. *See Sullivan*, 667 F.3d at 330; *In re AT&T Corp.*, 455 F.3d at 164 ("In common fund cases such as this one, the percentage-of-recovery

method is generally favored. * * * But we have recommended that district courts use the lodestar method to cross-check the reasonableness of a percentage-of-recovery fee award.") (citations and internal quotations omitted); *Rite Aid*, 396 F.3d at 300, 305; *see also Varacallo*, 226 F.R.D. at 249, 253.

Under this method, a court should first determine how many hours were reasonably expended in the litigation, and then multiply those hours by the prevailing local rate for an attorney of the skill required to perform the litigation. *Blum v. Stenson*, 465 U.S. 886, 888, 895 (1984); *In re Insurance Brokerage*, 297 F.R.D. at 156 (quoting *In re Rite Aid*, 396 F.3d at 305) ("The lodestar analysis is performed by 'multiplying the number of hours reasonably worked on a client's case by a reasonable hourly billing rate for such services based on the given geographical area, the nature of the services provided, and the experience of the attorneys.'"). "The reasonable attorney rate is determined by reference to the marketplace." *In re Insurance Brokerage*, 297 F.R.D. at 157 (the starting point for calculating fees is "an attorney's customary billing rate."); *McGee v. Cont'l Tire N. Am., Inc.*, No. CIV. 06-6234(GEB), 2009 WL 539893, at *17 (D.N.J. Mar. 4, 2009); *In re Schering-Plough/Merck Merger Litig.*, No. CIVA09-CV-1099DMC, 2010 WL 1257722, at *18 (D.N.J. Mar. 26, 2010) ("[a]n overall hourly lodestar non-weighted average ranging from $465.68 to $681.15 is not unreasonable in light of similar rates charged in the [2010] market* * *."). The marketplace rate reflects the rate at the time the fee request is submitted. *In re Insurance Brokerage*, 297 F.R.D. at 157; *McGee*, No. 2009 WL 539893, at *17. Once the burden for establishing the "community market rate" has been met, if the opposing party does not provide contradictory evidence, then the court "does not have

discretion to adjust the requested rate downward." *In re Insurance Brokerage*, 297 F.R.D. at 157.[3]

After determining the lodestar, the Court divides the total fees sought by the lodestar to arrive at a multiplier, which is used to account for the risk Class Counsel assumes when they take on contingent-fee cases. *In re Rite Aid*, 396 F.3d at 305-06; *see also Vizcaino v. Microsoft* Corp., 142 F.Supp.2d 1299, 1305 (W.D. Wash. 2001) ("Vizcaino II") ("To restrict Class Counsel to the hourly rates they customarily charge for non-contingent work-where payment is assured-would deprive them of any financial incentive to accept contingent-fee cases which may produce nothing. Courts have therefore held that counsel are entitled to a multiplier for risk."). If the multiplier is too high, that is cause for the court to reconsider the reasonableness of the award, if necessary. *Id*. at 306; *In re Insurance Brokerage*, 297 F.R.D. at 156. On the other hand, if the multiplier is low, this may confirm the reasonableness of the award. *In re Schering-Plough Corp.*, 2013 U.S. Dist. LEXIS 147981, 96-97 (D.N.J. Aug. 27, 2013). The multiplier does not need to fall within a "pre-defined range," but the court's analysis should justify the award. *In re Rite Aid*, 396 F.3d at 306; *In re Insurance Brokerage*, 297 F.R.D. at 156. Multipliers of one to four are commonly found to be appropriate in complex class action cases. *See In re Prudential Ins.*, 148 F.3d at 341; *In re Schering-Plough Corp.*, 2013 WL 5505744, at *34 (finding a 1.3 modifier to be very low and stating, "[i]ndeed, lodestar multipliers well above 1.3 and up to four are often used in common fund cases."); *see also AT&T*, 455 F.3d at 172 (multiplier of 2.99 in a case that "was neither legally nor factually complex.") (citation omitted); *In re Rite Aid Corp.*

[3] When performing the lodestar cross-check, the court "should apply blended billing rates that approximate hourly billing rates that approximate the fee structure of all the attorneys who worked on the matter." *In re Rite Aid*, 396 F.3d at 306; *In re Insurance Brokerage*, 297 F.R.D. at 156. Here, Class Counsel have included the hours for partners, associates, contract lawyers, law clerks and para-professionals, thereby presenting the fee structure of all the attorneys and staff who have worked on the case. The blended rate is equal to $342.00 per hour.

*Sec. Litig.*, 146 F. Supp. 2d 706, 736 (E.D. Pa. 2001); *Lucent*, 327 F. Supp. 2d at 443 (2.13 multiplier); *In re AremisSoft Corp. Sec. Litig.*, 210 F.R.D. 109, 135 (D.N.J. 2002) (4.3 multiplier); *In re Ikon Office Solutions, Inc. Sec. Litig.*, 194 F.R.D. 166, 195 (E.D. Pa. 2000) (2.7 multiplier). Furthermore, although Counsel have been unable to identify any precedent analogous to the specific settlement parameters in this case, where apportionment of a fee is appropriate between more than one defendant the method of apportionment generally lies within the district court's discretion. *See Torres-Rivera v. O'neill-Cancel*, 524 F.3d 331, 339 (1st Cir. 2008) *citing Grendel's Den, Inc. v. Larkin*, 749 F.2d. 945, 952-55 (1st Cir. 1984) (internal citations omitted).

As detailed in the declaration of Steven J. German, the Class law firms dedicated 27,639 hours to prosecuting these claims. German Decl. ¶ 40. Applying the appropriate billing rates to those hours results in a lodestar of approximately $10,261,248. *Id.* ¶ 47. As a result, the applicable multiplier to reach the $2,504,250 million fee award is approximately 0.24, well below the range of appropriate multipliers. *Id.*[4]

## IV. CLASS COUNSEL SHOULD BE REIMBURSED FOR LITIGATION COSTS

Counsel in common fund cases is "entitled to reimbursement of expenses that were adequately documented[5] and reasonably and appropriately incurred in the prosecution of the class action." *In re Cendant Corp., Derivative Action Litig.*, 232 F. Supp. 2d 327, 343 (D.N.J. 2002); *In re Ins. Brokerage Antitrust Litig.*, 297 F.R.D. at 157 (citing *In re Safety Components,*

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[4] Applying the lodestar cross check demonstrates that the $2,504,250 fee sought here represents only 1/4 of the hours Class Counsel have dedicated to the prosecution of all plaintiffs' claims in Classes A, B and C. Class Counsel therefore believe that it would be appropriate for the Court to exercise its discretion to consider a portion of Counsel's total hours in determining the reasonableness of a fee if, and when, Counsel seek a fee award in connection with a recovery from PPG on the Class B claims.

[5] Upon request by the Court, Counsel will provide documentation of such expenses for *in camera* review.

*Inc. Sec. Litig.*, 166 F. Supp. 2d 72, 108 (D.N.J. 2001)). Courts have approved litigation costs expended for expert and witness fees; Westlaw and legal research; consultants and investigators; document imaging, scanning and coding; photocopying; postage; hotel and travel expenses; deposition transcripts; creating and maintaining electronic document databases and telephone costs. *E.g.*, *Abrams v. Lightolier Inc.*, 50 F.3d 1204, 1225 (3d Cir. 1995); *In re Ins. Brokerage Antitrust Litig.*, 297 F.R.D. 136, 158 (D.N.J. 2013); *Varacallo*, 226 F.R.D. 207, 256 (D.N.J. 2005); *Demmick v. Cellco P'ship*, No. 06-CV-2163 (JLL) (D.N.J. May 1, 2015) *citing Dewey*, 728 F.Supp.2d at 611-12.

In order to prosecute this case to settlement, Class Counsel advanced over $1,425,652.27 in necessary and reasonable expenses over the course of this litigation. German Decl. ¶ 43. Expenses incurred in the prosecution of this case include: fees for experts or consultants in various scientific disciplines such as air transport of contaminants, risk assessment, forensic reconstruction, toxicology, property valuation and economics; mediation fees and costs; the costs associated with document management, reviews, imaging, Bates labeling and productions; the costs associated with fact and legal research; the filing of pleadings and discovery responses; deposition transcripts and videos; litigation support costs associated with copying, uploading, and analyzing voluminous data and document collections and costs associated with travel and lodging for hearings, client meetings, expert meetings, site visits, Court conferences, co-counsel meetings, document reviews, mediation and meetings with opposing counsel. *Id.* All of these expenses were advanced by Class Counsel with no guarantee of reimbursement and were necessary to develop and prosecute these claims for the benefit of the Settlement Classes.

As explained above, settlement has been reached with Honeywell only. However, as the Court knows, this case involved numerous allegations of joint and several liability, including

Civil Conspiracy. As such, up until the time when the settling parties notified the Court of their settlement in principle, the case was litigated in a manner such that all costs were advanced by the Class firms in their effort to prosecute the claims against Honeywell and PPG jointly. For instance, costs associated with attendance at court conferences, expert work and legal research were indistinguishable as between Honeywell and PPG. Costs associated with discovery and depositions of defendants and non-parties were similarly advanced on an indistinguishable basis and the information acquired informed our case strategy against both defendants jointly. Defendants' discovery was advanced in similar fashion, with examination of non-parties and the Class Representatives focused on common issues such as statute of limitations.

Once a settlement in principle was reached, however, the majority of case expenses, such as expert expenses, were incurred in pursuing plaintiffs' claims against PPG. As such, Class Counsel have isolated these expenses and do not seek reimbursement of those costs from the Honeywell common fund. We reserve our right to seek reimbursement for such expenses should the Class B case against PPG resolve to the benefit of the plaintiffs. At such time, based on an allocation formula approved by the Court, Class Counsel may perform a second distribution of expenses to the Class A and C plaintiffs based on a recovery from PPG.[6] This approach to the reimbursement of costs is equitable in that Class Counsel are reimbursed for their reasonable and necessary costs to achieve this settlement with Honeywell while the Classes are only assessed their fair share of expenses.

[6] Class Counsel have likewise isolated certain Honeywell-only expenses, such as the costs associated with the mediation and settlement, which would not be reimbursed from PPG.

## V. INCENTIVE AWARDS FOR CLASS REPRESENTATIVES AND NAMED CLASS MEMBERS

Incentive awards are fairly typical in class action cases. *See* 4 William B. Rubenstein *et. al.*, *Newberg on Class Actions* §11:38 (4th ed. 2008); Theodore Eisenberg & Geoffrey P. Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study*, 53 U.C.L.A. L. Rev. 1303 (2006). The awards are payments to class representatives for their service to the class in bringing the lawsuit, including any financial or reputational risks undertaken in bringing the action. *Bredbenner v. Liberty Travel, Inc.*, No. CIV.A. 09-1248 MF, 2011 WL 1344745, at *22-23 (D.N.J. Apr. 8, 2011); *In re Imprelis Herbicide Mktg., Sales Practices & Products Liab. Litig.*, 296 F.R.D. 351, 371 (E.D. Pa. 2013). In cases where the class receives a monetary settlement, the awards may be paid from the common fund. *E.g.*, *Dewey*, 728 F. Supp. 2d at 610; *Bredbenner v. Liberty Travel, Inc.*, No. CIV.A. 09-1248 MF, 2011 WL 1344745, at *22 (D.N.J. Apr. 8, 2011). Each Class representative was subjected to invasive written discovery, electronic discovery, document production, and deposition. Each spent considerable time communicating with counsel and other class members, or incurred other out-of-pocket expenses directly related to representation of the Classes. German Decl. ¶ 37. Due to these efforts, Class Counsel recommends an award of $10,000 for each of Sergio de la Cruz and Shem Onditi.

These incentive awards are not conditioned on the individuals' support for the settlement, and thus, do not cause the interests of the named plaintiffs to diverge from those of unnamed plaintiffs nor undermine the adequacy of the Class representation. Cf. *Radcliffe v. Experian Info. Solutions Inc.*, 715 F.3d 1157 (9th Cir. 2013). The awards are for the purpose of compensating plaintiffs for their service to the Classes in bringing the lawsuit. Further, the incentive payments are not disproportionately large compared to the payments to individual class members. *See* 2 McLaughlin on Class Actions § 6:28 (11th ed.) (It is fair and reasonable to compensate class

representatives from the recovery for the efforts they make and financial and reputational risks they incur in obtaining a recovery on behalf of the class; the range is usually $1,000-$20,000, though a proposed incentive award that is at or near one percent of the common fund requires exceptional justification). Here, the requested award amounts of $10,000 to each of two named Class Representatives constitute .099% of the common fund and are similar to incentive awards in other class actions. *See In re Ins. Brokerage Antitrust Litig.*, 297 F.R.D. at 158 (awarding $8,000 to each of the eight named plaintiffs); *Bredbenner*, 2011 WL 1344745, at *22 (awarding $10,000 to each of the eight named plaintiffs). In light of the Class-wide benefits resulting from this Settlement, the amounts sought to reward the identified named class representatives are appropriate.

## VI. CONCLUSION

For the foregoing reasons, Class Counsel's application for an award of $2,504,250 in fees, $1,191,174.67 in costs and $20,000 in incentive awards should be granted.

Dated: June 1, 2015

Respectfully submitted,

s/ Steven J. German
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*Trial Counsel for Plaintiffs and the Classes*

**UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF NEW JERSEY**

| MATTIE HALLEY, SHEM ONDITI, LETICIA MALAVÉ and SERGIO de la CRUZ, On Behalf of Themselves and All Others Similarly Situated,<br><br>Plaintiffs,<br><br>-against-<br><br>HONEYWELL INTERNATIONAL, INC. and PPG INDUSTRIES, INC.,<br><br>Defendants. | Civil Action No. 2:10-cv-3345 (ES)(JAD)<br><br>*Document electronically filed.*<br><br>**DECLARATION OF STEVEN J. GERMAN IN SUPPORT OF CLASS COUNSEL'S MOTION SEEKING AN AWARD OF REASONABLE COSTS, ATTORNEYS' FEES AND INCENTIVE AWARDS** |
|---|---|

1. I am an attorney duly licensed and in good standing in the states of New York, New Jersey and the District of Columbia. I am also admitted to the U.S. District Court for the District of New Jersey, as well as the Southern, Eastern and Northern Districts of New York. I am the founding member of the law firm German Rubenstein LLP and am counsel for plaintiffs and the putative classes in this case. I have personal knowledge of each of the facts set forth in this Declaration and can and would testify competently thereto.

2. This Declaration is made in support of Class Counsel's Motion Seeking an Award of Reasonable Costs, Attorneys' Fees and Incentive Awards.

**The Settlement**

3. The Settlement Agreement is the result of contested litigation and extensive negotiations on the part of Class Counsel and Honeywell's Counsel, all of whom have substantial experience in litigating class actions involving environmental and toxic tort claims. The Settlement Agreement represents a significant accomplishment for Class Counsel, the Court and the Classes.

4. This litigation involved substantial risks and difficulties. Environmental and toxic tort claims such as those brought here are routinely expert-driven, expensive and specialized. This matter included highly technical claims associated with airborne contaminant release and migration and allegations of improper remediation impacting property values.

5. Discussions leading to this Settlement began as class-phase fact discovery was nearing its end, just before plaintiffs were required to serve their class-phase expert reports. The parties continued to litigate the case while also engaging in settlement negotiations off and on until the parties reached a preliminary agreement. Such dual-track case management is generally recognized as constituting best practices.

6. This Settlement was reached at arms' length with the assistance of a highly respected mediator and is a good result because it promptly and reasonably resolves trespass, nuisance, negligence and other tort claims for property damages. The Settlement establishes a $10,017,000 fund that provides compensatory relief directly to the Classes. In addition, Honeywell has agreed to fund a community project from any unclaimed funds up to $100,000. This project will benefit the health, environmental, educational and/or recreational interests of the Classes. The Classes consist of approximately 3,400 property owners of Class 2 Residential (1-4 family) private property in Jersey City, New Jersey, whose property has been or may have been impacted by exposure resulting from Honeywell's generation of, emission of, disposal of and failure to properly remediate hexavalent chromium originating at its former Jersey City chromate production facility.

7. Plaintiffs anticipate that the cost of Notice and Administration will range from $100,000 to $120,000, based on discussions and negotiations with the Claims Administrator, Garden City Group.

**Value of the Settlement / Benefits Provided to the Classes**

8. Honeywell has agreed to pay the Class A and C member cash payments according to the terms of the Settlement Agreement. Doc. No. 367. Honeywell has also agreed to fund a community project with up to $100,000 of any unclaimed settlement funds. *Id.* The Classes will receive fair and reasonable compensation for their damages under the circumstances of this case. The Settlement leaves unaltered Honeywell's prior court-ordered obligation to remediate its chromium waste disposal sites in Disposal Area A.

9. The Settlement Agreement has been submitted to the Court and received preliminary approval on April 30, 2015. Doc. No. 390.

10. If for any reason the Court rejects the Settlement, Class Counsel is ready, willing and able to try the case on the merits and/or explore a different settlement.

**Internal Management**

11. I have been personally and extensively involved in this case in order to ensure a high-quality and efficient prosecution, as well as a full and fair culmination of the litigation. I have personally or telephonically appeared to address all matters before this Court.

12. At all times, the efforts of the team of Class Counsel were disciplined and coordinated to avoid waste and to maximize the best possible result for the Classes.

13. All assignments and information were regularly coordinated among Class Counsel (and the attorneys and staff in their firms). Class Counsel used case management programs, email, document review platforms and other technologies to make this process of information exchange run as efficiently as possible.

14. All Class Counsel were required to keep and submit time and expense records. Class Counsel worked efficiently and effectively.

**Settlement Negotiations**

15. I have litigated a number of environmental and toxic tort cases, including a major Jersey City chromium case through trial in this District and partially through an appeal in the Third Circuit. The Arnold & Porter firm represented Honeywell in that appeal. Prior to the present case, I knew, by reputation and through our prior work together on two cases, Michael Daneker, lead counsel for Honeywell. Mr. Daneker coordinated efforts on his side and ably deployed his litigation team.

16. Class Counsel's focus in approaching settlement was on balancing the strength of a claim against the payment offered to resolve it, which is a key factor in assessing the adequacy of the proposed settlement (*e.g.*, *Petrovic v. Amoco Oil Co.*, 200 F.3d 1140, 1150 (8th Circ. 1999)), but does not require the fact-finding of trial.[1] One purpose of a settlement is to avoid having to reach the merits of a case. Definitive statements on the merits should be avoided as a settlement may fail and the case may come to trial. *Managing Class Action Litigation: A Pocket Guide for Judges* (2d ed.) Federal Judicial Center (2009), at 11.

17. Plaintiffs and Honeywell participated in three separate rounds of settlement negotiations. The first settlement discussions began in 2011 and included all parties. This attempt at an early resolution of the case was unsuccessful. The Settlement now before the Court resulted from two rounds of multi-day, complicated negotiations requiring the great effort and skill of an experienced mediator to bring the parties together to reach agreement. The parties

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[1] A Rule 23 Evaluation should avoid findings on the underlying facts relevant to the claim and instead consider or estimate a range of possible outcomes, along with some estimation of the probabilities of each. *Reynolds v. Beneficial National Bank*, 288 F.3d 277 (7th Circ. 2002). Whatever method one uses to assess the strength of the case, that effort must not transform the Rule 23 fairness hearing into a trial on any of the merits or findings about them.

ultimately reached a settlement in principle on July 14, 2014, shortly before close of class phase discovery and exchange of plaintiffs' expert disclosures.

18. On July 15, 2014, the settling parties advised the Court of their agreement in principle. Doc. No. 350. Each Class Representative, as well as representatives of Honeywell, reviewed and approved the Settlement Agreement.

19. On November 7, 2014, Honeywell and plaintiffs filed their Joint Motion for Preliminary Approval of Class Action Settlement. Doc. No. 367. On May 1, 2015, the Court issued an Order Certifying the Settlement Class, Preliminarily Approving the Class-Action Settlement and Approving the Form and Manner of Notice. Doc. Nos. 389 and 390.

20. Pursuant to the Settlement Agreement, notice to the Classes will be mailed, published in a local newspaper and posted on a website beginning June 1, 2015. Additionally, personnel of the Settlement Claims Administration firm Garden City Group will be available for telephonic consultations. The time period for objecting, opting out and/or filing a claim shall expire in 60 days. Doc. No. 367.

21. Class Counsel devoted significant time to the mediation and settlement of the Class A and C claims, including the preparation of voluminous settlement materials for the mediator, four days of mediation and our work with Honeywell and the Garden City Group to facilitate a smooth claims administration process. Our commitment continues in our ongoing case against PPG.

**Reaction of Class**

22. We are aware of no objections from Class A or C members to the settlement at this time. The objection period will remain open until July 31, 2015.

**Pre-Suit Investigation**

23. Prior to initiating this litigation, Class Counsel and their scientific consultants extensively investigated and reviewed voluminous (i) public records from the New Jersey Department of Environmental ("NJDEP") discussing the historic and present conditions at and around defendants' PPG and Honeywell's respective chromate chemical production facilities and Chrome Ore Processing Residue ("COPR") waste disposal sites ("COPR sites") in Jersey City and within the impacted communities; (ii) private documents and defendant's internal documents (made public in prior chromium lawsuits) concerning their Jersey City chromate chemical production operations, the releases from those facilities and their disposal of COPR at various sites in Jersey City, the environmental fate and toxicity of COPR and hexavalent chromium and their early knowledge of the health risks associated with COPR and hexavalent chromium; (iii) peer-reviewed and scientific literature concerning hexavalent chromium and its fate in the environment; (iv) studies and reports concerning appropriate medical tests and screening for the early detection of serious latent disease in populations exposed to hexavalent chromium; and (v) case law concerning class certification of medical monitoring and property damage claims in the Third Circuit and nationwide. Counsel relied on that work during the course of the litigation including, but not limited to, successfully defeating Honeywell's Motion to Dismiss on Statute of Limitations, discovery, strategy decisions, expert work, court conferences and settlement negotiations.

24. The pre-suit investigations led to the strategy employed in our prosecution of this case, including selection of appropriate class representatives, determination of appropriate class scope(s), pursuit of needed discovery and the claims for relief upon which we chose to rely.

**Litigation**

25. This case involves allegations that Honeywell and PPG generated, released, improperly disposed of and failed to properly remediate over 2,000,000 tons of hexavalent chromium contamination at numerous chromium waste disposal sites and Class properties in the heart of Jersey City, New Jersey, thereby causing plaintiffs to suffer damage to their properties, loss of use and enjoyment of their properties and diminution in property value.

26. Defendants' generation of, emission of, disposal of and failure to properly remediate hexavalent chromium in Jersey City remains a complex environmental problem. Jersey City chromium has been the subject of numerous federal and state lawsuits, administrative enforcement actions and university, government and peer-reviewed studies, including a ground-breaking 2008 Health Consultation by the U.S. Department of Health and Human Services entitled "Analysis of Lung Cancer Incidence Near Chromium-Contaminated Sites in New Jersey (a/k/a Hudson County Chromium Sites) Jersey City, Hudson County New Jersey." U.S. Dep't of Health and Human Services, *Health Consultation: Analysis of Lung Cancer Incidence Near Chromium-Contaminated Sites in New Jersey (a/k/a Hudson County Chromium Sites) Jersey City, Hudson County New Jersey* (2008), *available at* http://www.atsdr.cdc.gov/HAC/pha/Chromium-ContaminatedSitesinNJ/Chromium-Contaminated%20Sites%20%28NJ%29%20093008.pdf. The topic presents a web of complex scientific and fact issues involving the generation, release and disposal of hexavalent chromium at and near defendants' respective Jersey City manufacturing facilities, its spread throughout Jersey City, the chemistry of hexavalent chromium and its toxicity; its migration potential in the environment; its impact on human health and the environment and its impact on property values in Jersey City.

27. Litigation commenced on May 17, 2010, when plaintiffs filed a complaint in Hudson County Superior Court. Doc. No. 1.

28. PPG removed the case to the District of New Jersey pursuant to the Class Action Fairness Act of 2005, Pub. L. No. 1109-2, 119 Stat. 4 (codified in 28 U.S.C. §§ 1332(d), 1453, 1711-1715). *Id.*

29. Honeywell filed a Motion to Dismiss, which was extensively briefed. Doc. No. 12. The Court granted Honeywell's motion in part, dismissing plaintiffs' claim for unjust enrichment, but denying all other bases for dismissal, including statute of limitations. Doc. No. 35. Honeywell filed a Motion for Reconsideration (Doc. No. 39), which was also extensively briefed and ultimately denied. Doc. No. 57.

30. In August 2011, the parties began discovery and moved forward with their preparation for class certification. Fed. Civ. P. Rule 26 disclosures were exchanged. More than 100 individuals and organizations with relevant knowledge were identified. Defendants served their first set of Interrogatories and Requests for Production on plaintiffs and plaintiffs served their first set of Interrogatories and Requests for Production of Documents on defendants. In response to plaintiffs' Requests for Production of Documents and Interrogatories, Honeywell produced greater than 2,500,000 pages of documents in 23 separate rolling productions between September 2011 and June 2014. PPG produced greater than 2,500,000 pages of documents in 14 separate rolling productions. Many of these documents consisted of highly technical environmental reports such as remedial investigation and interim remedial measure reports, sampling data and scientific studies. At the time of settlement, an untold number of additional documents remained outstanding from defendants. During the course of the litigation the parties exchanged additional Interrogatories, Requests for Production and Requests for Admission.

31. In 2013 defendants began a rolling production of their respective privilege logs. Honeywell's privilege logs consisted of 6,054 entries and PPG's privilege logs consisted of 35,433 entries.

32. Plaintiffs and defendants collectively issued 69 subpoenas for document productions or depositions on non-parties, administrative agencies and environmental consultants, including Mike McCabe, the Site Administrator for the PPG sites; Dr. Michael Gochfeld of Rutgers University; the University of Medicine and Dentistry of New Jersey and the Environmental Occupational Health Studies Institute; NJDEP; the University of Connecticut; environmental contractors AECOM, Weston Solutions, Emilcott, AMEC and Dresdner Robin; public relations consultant Jeff Worden; developer K. Hovnanian Company and numerous real estate appraisers and mortgage companies which together produced hundreds of thousands of additional documents and corresponding assertions of privilege.

33. The parties appeared for 33 days of deposition (19 noticed by Plaintiffs; 14 noticed by defendants). The depositions were taken of the class representatives, employees of the NJDEP, doctors and scientists, party witnesses and 30(b)6 deponents, the Site Administrator for the PPG chromium sites and his professionals, environmental contractors and consultants, and real-estate appraisers.

34. The parties appeared for 23 court conferences; 12 in person and 11 telephonically. The Court issued numerous Scheduling Orders, which, due to the complexity and magnitude of the case, were periodically amended and deadlines extended. *E.g.*, Doc. Nos. 64, 67, 112, 207, 263 and 303.

35. Class Counsel consulted and retained numerous experts in highly technical fields such as environmental science, medicine, toxicology, chromium toxicity, geochemistry, air modeling, forensic reconstruction, risk assessment, economics and property valuation.

36. Offensive discovery in this case was hard fought – an "arduous" undertaking requiring extensive "letter-writing, e-mail exchange, debate and conferring." *Quoting* Doc. No. 152, at p. 1. Plaintiffs faced three Motions to Quash and Protective Orders. *See* Doc. Nos. 90, 275 and 331. Discovery disputes concerning the permissible scope of class phase discovery, the completeness of defendants' responses, confidentiality, cost-shifting and privilege resulted in numerous meet-and-confers, letter-writing, motion practice, briefing and our successful appeal to the District Judge of Magistrate Judge Dickson's discovery ruling on several important issues. *See*, *e.g.*, Doc. Nos. 98, 127, 138, 152 and 326.

37. Defensive discovery was also burdensome. Plaintiffs faced a coordinated assault by PPG and Honeywell into discovering plaintiffs' paper records, computer files, internet search history, text messages, financial records and interpersonal communications. The Class Representatives appeared for lengthy and sometimes difficult and emotional multi-day depositions. In addition, the Court ordered Class Counsel to create a privilege log of all of their client intake questionnaires and all communications between counsel and any putative class member. Each Class Representative spent considerable time communicating with counsel. Some Class Representatives incurred out-of-pocket expenses directly related to representation of the Classes.

38. The Class firms devoted over 10,000 hours to discovery.

39. As the case progressed and new information came to light through discovery, Class Counsel narrowed the scope and size of the Class through amendments to the Complaint.

Plaintiffs' original Complaint alleged that defendants were jointly and severally liable under Private Nuisance, Strict Liability, Trespass, Battery, Negligence, Civil Conspiracy and Unjust Enrichment. Doc. No. 1. The Complaint included a medical monitoring class and a property damage class of people who owned property located within one quarter mile from any of 145 different COPR waste sites and defendants' respective chromate production facilities. *Id.* On June 20, 2012, plaintiffs filed an Amended Complaint that dropped their requested relief of medical monitoring and limited the property damage class to people who owned property located within one-quarter mile of only 77 COPR sites and defendants' respective chromate production facilities. Doc. No. 124. In January 2014, over defendants' objection, and after briefing the issue of Leave to Amend the Complaint, plaintiffs narrowed the case to only 26 COPR sites. The Complaint created three classes of residents whose properties were impacted by each of defendant's primary waste disposal areas – Disposal Area A contained Honeywell's former chromate production facility and primary waste disposal sites and Disposal Area B contained PPG's former chromate production facility and primary waste disposal sites. The Complaint alleged that individuals who owned property within Classes A and C have been affected by releases from Honeywell's former production facility and waste at Honeywell's 17 primary COPR sites, comprising Disposal Area A, and individuals who owned property within Class B have been affected by releases from PPG's former production facility and waste at PPG's 9 primary COPR sites, comprising Disposal Area B. Based on defendants' discovery responses and representations to the Court, the Complaint alleged that Honeywell was liable to Classes A and C and PPG was liable to Class B. The Complaint also alleged that defendants were jointly and severally liable to plaintiffs based on their joint failure to remediate the chromium and their

joint efforts to conceal the nature, extent and danger of the waste under the claim of Civil Conspiracy.[2]

40. All told, the Class firms dedicated 27,639 hours in connection with the investigation, development, prosecution and settlement of the claims in this case.

**Experience of Class Counsel[3]**

41. Lead counsel German Rubenstein LLP, Janet, Jenner & Suggs, LLC and Anthony Z. Roisman of National Legal Scholars Law Firm, P.C. ("NLSLF") have extensive experience representing plaintiffs in environmental and toxic tort class action litigation. The firms have also successfully handled class actions and mass torts throughout the United States in both state and federal courts. In addition, at various times the law firms of Kanner & Whiteley, L.L.C. (www.kanner-law.com), Williams Cuker Berezofsky (www.wcblegal.com) and the Law Office of Keith Altman assisted in the prosecution of the claims. These firms have also successfully handled class actions and mass torts throughout the United States in both state and federal courts. Kanner & Whiteley, L.L.C. and Williams Cuker Berezofsky, in particular, have extensive experience representing plaintiffs in environmental and toxic tort class action litigation. Keith Altman has extensive technical training and legal experience navigating, managing and litigating electronic discovery issues.

**German Rubenstein LLP** currently serves as co-lead class counsel in one environmental class action (*In re: Behr Dayton Thermal Products, LLC Litigation* (S.D. Ohio, 3:08-cv-326)) and one consumer fraud class action (*Cutrone, et al. v. Mortgage Electronic Registration*

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[2] The Complaint was amended twice after Settlement to conform the Class definitions to the Settlement Agreement and other agreements of the parties as a result of the Settlement. Doc. Nos. 384 and 391.

[3] If requested by the Court, we will provide the detailed CVs of all Class Counsel and attorneys who worked on this matter.

*Systems, Inc.* (E.D.N.Y., 1:13-cv-3075)). The firm recently also served as class counsel in two other environmental class actions (*Roeder v. Atlantic Richfield, Co.* (D. Nev., 3:11-cv-105) and *Sher v. Raytheon Co.* (M.D. Fla., 8:08-cv-889)). Like the claims here, the claims in *Behr Dayton*, *Roeder* and *Raytheon* include allegations of trespass, private nuisance, strict liability, and negligence arising from defendants' improper disposal and failure to remediate contaminants, resulting in interference with the use and enjoyment of property; diminution in property value and property damage.

**Steven J. German** has represented environmental plaintiffs in a dozen states. In 2011 a federal Judge appointed Mr. German as Plaintiffs' Interim Co-Lead Class Counsel in the *Behr Dayton* matter and he presently serves in this capacity. He also recently served as plaintiffs' counsel in *Roeder*, in which a class action settlement valued at $20,000,000 was reached in connection with the contamination of domestic drinking water wells in Yerington, Nevada from mining waste. From 2004 through 2008, Mr. German played a lead role in MDL 1358: *In Re MTBE Products Liability Litigation* (S.D.N.Y.). Mr. German represented drinking water providers nationwide for damages resulting from the contamination of their water wells with the gasoline additive Methyl Tertiary Butyl Ether. In a May 2008 settlement, he and his co-counsel recovered $423,000,000 for their clients nationwide for the filtration of drinking water. In 2006, Mr. German was appointed as Special Counsel for the State of New Mexico for MTBE groundwater litigation. Mr. German also represented the Suffolk County Water Authority – the nation's largest provider of drinking water from groundwater – in its MTBE lawsuit. From 1999 until 2003 Mr. German played a lead role in the litigation and trial of *Interfaith Community Organization v. Honeywell* (D.N.J. 1995), concerning chromium in Jersey City. Mr. German has successfully represented numerous other environmental plaintiffs including private citizens,

landowner's, community groups and environmental organizations. Prior to beginning private practice, Mr. German served as a law clerk to the United States Department of Justice, Environmental Enforcement Section, Region 5 and the USEPA, New Jersey Superfund Branch. He has 16 years of class action, complex litigation and trial experience. He teaches a seminar entitled Environmental Litigation and Toxic Torts at the Pace Law School and has lectured at other law schools and professional symposia nationwide.

**Joel M. Rubenstein** currently represents the victims of toxic exposure nationwide. Like his partner Mr. German, Mr. Rubenstein currently represents plaintiffs in the *Behr Dayton* matter and played a lead role in the settlement of the *Roeder* matter. He previously represented plaintiffs in the *Raytheon* matter as well as the victim of radon exposure in *Gates v. W.R. Grace & Co., et al*. (M.D. Fl.). He served as a member of a nationwide consortium of firms representing the victims of cancer caused by hormone therapy and another consortium of firms representing those injured by defective medical devices. Prior to forming German Rubenstein, Mr. Rubenstein spent six years at one of Wall Street's most prestigious law firms.

**Janet Jenner & Suggs, LLC**, with offices in Baltimore, South Carolina, Boston and New York, represents plaintiffs nationwide in mass tort, class action, complex personal injury and business litigation. Its principals, among the nation's leading trial lawyers who have achieved record setting verdicts and settlements, are all AV rated by Martindale-Hubbell and are named to The Best Lawyers in America®, and SuperLawyers®. Janet Jenner & Suggs, LLC, currently serves as class counsel in the environmental TCE groundwater contamination case *In re: Behr Dayton* and recently served as class counsel in *Roeder*. The firm also serves as Special Counsel to the State of New Jersey in the environmental case NJDEP v. Exxon Mobil Corp., Superior Court, Law Division, Union County, Docket No. UNN-L-3026-04.

**Howard A. Janet**: With more than 25 years of experience litigating cases in 40 states, Howard M. Janet has served as lead counsel in complex litigation against some of the largest healthcare organizations and insurers nationwide. He has record-setting jury verdicts and settlements in several states. He has represented or directed litigation strategy for clients in 40 states in association with local counsel on a *pro hac vice* basis. Mr. Janet previously served as a Governor of the Maryland Trial Lawyers Association and is a member of the MTLA President's Club as a Founder. The Maryland Association for Justice recently awarded Mr. Janet and his co-counsel its 2015 "Lawyer of the Year Award" for their accomplishments as lead counsel in the $190,000,000 class action settlement of *Jane Doe No. 1, et al., v. Johns Hopkins Hospital, et al.*, a medical malpractice/invasion of privacy/sexual abuse case that sought damages for all patients of Nikita A. Levy, M.D., a former Johns Hopkins OB-GYN, related to his surreptitious taking of photographs and video, and performance of unnecessary and improper examinations. He was also recently named Best Lawyers ® 2015 Lawyer of the Year–Product Liability, Baltimore, MD; Best Lawyers® 2012 Lawyer of the Year–Plaintiffs Personal Injury Litigation, Baltimore, MD. Mr. Janet presently serves as class counsel in the *Behr Dayton* environmental class action and recently served as co-lead class counsel in the *Roeder* environmental class action.

**Kenneth M. Suggs** also has significant experience in plaintiffs' toxic tort litigation. For example, Mr. Suggs represented a number of cotton mill workers who developed a disease known as byssinosis, or "brown lung disease" arising from exposure to cotton dust in the workplace. The cases involved complicated issues of exposure and causation, and were litigated under the South Carolina Occupational Disease Act. In connection with this litigation, Mr. Suggs brought the seminal case, *Page v. Mohasco*, in which the South Carolina Supreme Court first interpreted the Act. He was also active in the "Benlate" litigation, involving an agricultural

product manufactured by DuPont. The product, a fungicide, became contaminated with an herbicide, and was implicated in damage to crops and farmland across the United States. Mr. Suggs successfully litigated liability, causation, and damages involving this product in many jurisdictions, including Florida, South Carolina, Georgia, New York, and Massachusetts.

Mr. Suggs is a recent Past President of the American Association for Justice, formerly known as the Association of Trial Lawyers of America. He is a Fellow of the National College of Advocacy, has served as President of the South Carolina Trial Lawyers Association, and serves on its Board of Governors and Legislative Committee. Mr. Suggs is a member of the American Board of Trial Advocates; a Fellow of the American College of Trial Lawyers; a member of the United States District Court Advisory Committee and was a co-draftsman of the South Carolina Rules of Evidence. In 2012, he was named Best Lawyers ® Lawyer of the Year– Product Liability, Columbia, SC. In 2009 he was recognized as South Carolina Super Lawyer's® Top Point Getter and has been listed among Best Lawyers in America® for more than 10 years in the areas of mass torts, medical malpractice, personal injury and product liability litigation. Mr. Suggs has received numerous honors including inclusion in The Best Lawyers in America for Mass Tort Litigation / Class Actions – Plaintiffs, Medical Malpractice Law – Plaintiffs, Personal Injury Litigation – Plaintiffs and Product Liability Litigation – Plaintiffs 2014. He was named the Best Lawyers' 2014 Columbia, SC Personal Injury Litigation – Plaintiffs "Lawyer of the Year".

**Anthony Z. Roisman** is the Co-Managing Partner of the National Legal Scholars Law Firm, P.C, ("NLSLF") which includes some of the nation's most prominent law professors and legal scholars as affiliated counsel. Mr. Roisman has been involved in litigation involving environmental issues since 1969. From 1979-1981 he was Chief, Hazardous Waste Section,

Land and Natural Resources Division, U.S. Department of Justice and from 1981-1982 he was Special Litigator for Hazardous Waste, Land and Natural Resources Division, U.S. Department of Justice. He has been co-lead counsel in over a dozen toxic tort cases, some of which involve TCE exposure, *e.g.*, *Yslava v. Hughes Aircraft Co. and Lanier v. Hughes Aircraft Company*, 936 P.2d 1274 (Ariz.,1997) (a mass tort personal injury case (*Yslava*) and a class action medical monitoring case (Lanier) involving exposures to TCE in groundwater as a result of illegal dumping by defendant) and *Bates v. Mitec Systems Corp.*, *Chittenden County Vermont Superior Court* (a suit for property damage and personal injury caused by the intrusion of TCE into the basement of plaintiffs' home as a result of illegal dumping by defendant).

Mr. Roisman, a former Lecturer of Environmental Students at Dartmouth College, is a frequent lecturer at ALI/CLE seminars on toxic torts and expert witness admissibility and author of numerous law review articles on toxic torts and expert witnesses including "Nuisance and the Recovery of 'Stigma' Damages: Eliminating the Confusion," co-authored with Gary Mason (The Environmental Law Reporter, Vol. XXVI, No. 2, 10057-10105, February, 1996) and "Surviving the *Daubert* Attack: Staying Focused" The Practical Litigator (ALI-ABA, November 2003). He is a Member, The Environmental and Natural Resources Law Clinic Litigation Review Committee, Vermont Law School (2005-present) and was a Member, Science in the Court Room Advisory Committee, The National Judicial College (1997-1999) and member of the faculty of the National Judicial College (1998-1999). He was a Member of the Advisers Committee, Restatement of the Law, Third, Torts: Apportionment of Liability (The American Law Institute, 1994-1997). He was a Member, Brookings Task Force on Civil Justice Reform (1989) and a Member, Board of Directors, Love Canal Medical Fund, Inc. (1985-1987). Mr. Roisman is a 1963 graduate of Harvard Law School.

**Request for Award of Reasonable Costs and Attorney Fees**

42. Class Counsel request an award of reasonable attorneys' fees and costs totaling $3,715,424.67, consisting of $2,504,250 in attorneys' fees, $1,191,174.67 in costs and $20,000 in incentive awards ($10,000 each) for the two named Class Representatives, Sergio de la Cruz and Shem Onditi.

43. The Class firms have advanced $1,425,652.27 in costs including, but not limited to, those for experts and consultants in various scientific disciplines; mediation fees and related expenses; document management, imaging, Bates labeling and productions; fact and legal research; court filing fees; deposition transcripts and videos; and travel and lodging for hearings, client meetings, expert meetings, site visits, court conferences, co-counsel meetings, document reviews, mediation and meetings with opposing counsel. All of these costs were necessary and reasonable in prosecuting plaintiffs' claims.

44. In recognition of the fact that this Settlement has been reached with only one of the two named defendants, Class Counsel do not seek reimbursement for all of the $1,425,652.27 in costs at this time from the Honeywell common fund. Class Counsel have identified and subtracted from this sum $234,477.60 in costs that were advanced exclusively in prosecuting the Class B claims against PPG after reaching a settlement in principle with Honeywell.[4] As the Court knows, before that time this case involved numerous allegations of joint and several liability, including Civil Conspiracy. As such, the $1,425,652.27 in reimbursement that Class Counsel seek were advanced in jointly prosecuting the claims of Classes A, B and C and, as such, are fairly reimbursable from the Honeywell common fund. Should the Class B case against PPG resolve to the benefit of the plaintiffs, Class Counsel may perform a second

[4] Likewise, Class Counsel have identified those expenses related exclusively with the Honeywell mediation and settlement

distribution of expenses to the Class A and C plaintiffs from such recovery pursuant to an allocation formula approved by the Court at that time to ensure an equitable distribution of such costs between the Classes.

45. All efforts were made to avoid duplicative assignments and, where appropriate, assignments were given to associate attorneys or paralegals at lower hourly rates in order to increase efficiency and lower costs. We took great care to divide work in such a way that focused on each attorney's strengths, skill and experience, so as to resolve tasks efficiently and reduce duplication of effort. For instance, Mr. Janet and Mr. Suggs, both of whom have extensive experience managing complex cases, directed Class Counsel's efforts throughout the case. Mr. Altman, who has extensive technical training and legal knowledge of e-discovery issues, led a small team of lawyers that was responsible for electronic discovery matters. Mr. Roisman, who has significant experience working with environmental experts, was active in the development of plaintiffs' expert case. Mr. German led a team of lawyers, law clerks and paralegals who were responsible for discovery, document review and depositions. Where duplication may have occurred, counsel exercised reasonable discretion to eliminate unnecessary or duplicative billing and expenses.[5] All work was done on a contingency basis.

46. The Settlement's benefits to class members is $10,017,000. Class Counsel's fee request of $2,504,250 is only 25% of the benefits that will flow to the Classes.

47. Applying the appropriate billing rates to those 27,369 hours results in a lodestar of approximately $10,261,248. The lodestar cross-check results in a negative multiplier of 0.24,

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[5] Each firm independently maintained and submits its own costs in connection with this Application. The firm of Janet Jenner & Suggs advanced $1,313,210.16 in costs; Williams Cuker Berezofsky $39,866.20; Kanner & Whiteley $71,842.81; and NLSLF $733.10.

which is well below the average multipliers typically applied in the Third Circuit for this type of matter.[6]

48. Class Counsel submit that this fee request is fair and reasonable in light of (1) the size of the fund created and the number of persons benefitted; (2) the 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 long duration of the litigation; (5) the significant risk of nonpayment; (6) the significant amount of time devoted to the case by plaintiffs' counsel; and (7) the awards in similar cases. *See Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 195 n.1 (3d Cir. 2000).

49. Class Counsel believe that this Settlement is in the best interest of Classes A and C based on the negotiations and a detailed knowledge of the issues present in this action. Specifically, Class Counsel balanced the terms of the proposed Settlement against the possible outcomes if the case proceeded through trial and appeals.

50. This action was filed on May 17, 2010. To properly handle and prosecute active class-action litigation such as this case, Class Counsel were often precluded from accepting or working on other potential fee-producing cases. This case was taken on a purely contingent basis, with Class Counsel advancing all costs, at considerable risk with the ultimate result open to question. Practicing in this area of law involves a great deal of risk as these cases may fail at the pleading stage, on class certification, on motions for summary judgment, at trial or on appeal. Routinely, defendants are represented by highly skilled and experienced local and national defense firms, as was the case here.

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[6] Each firm independently maintained and submits its time records in connection with this Application. Janet Jenner & Suggs devoted 13,642 hours; German Rubenstein 11,479; NLSLF 1,055; Kanner & Whiteley 790; Williams Cuker Berezofsky 568; and Keith Altman 104.

51. These cases require the constant engagement of Class Counsel. Extensive work is required to obtain and distill data and documents associated with the environmental operations at issue and the progression of the administrative proceedings taking place with government agencies; to conduct independent investigations to locate and interview potential witnesses to establish common treatment to support class certification, to support liability, develop appropriate scientific evidence, to maintain contact with Class Representatives, other Class Members and regulators, and to effectively defend against defendants' efforts to minimize these claims. Substantial written and oral discovery and motion practice is also required, as well as the research, expertise and drafting requisite to obtain class certification and then to prepare for trial.

52. The risks in taking on a class-action case are enormous. Litigating a class action against two multi-billion-dollar corporations through class certification and trial often takes years and requires the investment of millions of dollars with no guarantee of recovery.

53. Class Counsel have not yet received any fees in this case and have advanced all costs. By contrast, defendants' firms are able to bill their clients on a monthly basis and regularly receive payment.

**Conclusion**

I declare under penalty of perjury under the law of the State of New Jersey that the foregoing is true and correct.

Dated: June 1, 2015

Respectfully submitted,

*s/ Steven J. German*
Steven J. German, Esq.

GERMAN RUBENSTEIN LLP
Counsel for Plaintiffs and the Classes

**UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF NEW JERSEY**

MATTIE HALLEY, SHEM ONDITI, LETICIA MALAVÉ and SERGIO de la CRUZ, On Behalf of Themselves and All Others Similarly Situated,

Plaintiffs,

-against-

HONEYWELL INTERNATIONAL, INC. and PPG INDUSTRIES, INC.,

Defendants.

Civil Action No. 2:10-cv-3345 (ES)(JAD)

**ORDER GRANTING CLASS COUNSEL'S MOTION SEEKING AN AWARD OF REASONABLE COSTS, ATTORNEYS' FEES AND INCENTIVE AWARDS**

**IT IS HEREBY ORDERED** that Class Counsel's Motion Seeking an Award of Reasonable Costs, Attorneys' Fees and Incentive Awards is GRANTED. Accordingly, the Garden City Group, Inc. is directed to:

1. issue a check to the law firm of Janet Jenner & Suggs, LLC in the amount of $2,504,250 for attorneys' fees;
2. issue a check to the law firm of Janet Jenner & Suggs, LLC in the amount of $1,191,174.67 for reimbursement of litigation costs;
3. issue a check to Sergio de la Cruz in the amount of $10,000 as an incentive award; and
4. issue a check to Shem Onditi in the amount of $10,000 as an incentive award.

IT IS SO ORDERED.

Dated this ___ day of _____, 2015.

ESTHER SALAS
United States District Judge

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*Trial Counsel for Plaintiffs and the Classes*

**UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF NEW JERSEY**

| | | |
|---|---|---|
| MATTIE HALLEY, SHEM ONDITI, LETICIA MALAVÉ and SERGIO de la CRUZ, On Behalf of Themselves and All Others Similarly Situated,<br><br>Plaintiffs,<br><br>-against-<br><br>HONEYWELL INTERNATIONAL, INC. and PPG INDUSTRIES, INC.,<br><br>Defendants. | ) | Civil Action No. 2:10-cv-3345 (ES)(JAD)<br><br>**CERTIFICATE OF SERVICE**<br><br>Document electronically filed. |

I, Steven J. German, hereby certify that on June 1, 2015, Class Counsel's Motion Seeking an Award of Reasonable Costs, Attorneys' Fees and Incentive Awards, Memorandum in Support of Class Counsel's Motion, Declaration of Steven J. German, Esquire, a proposed form of Order

and this Certificate of Service were electronically filed with the Clerk of this Court using the CM/ECF system. I also certify that the foregoing documents were served on counsel of record, who are filing users, via Notices of Electronic Filing automatically generated by the Court's electronic filing system.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: June 1, 2015

By: /s/ Steven J. German
Steven J. German, Esq.

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