

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

---

DAVID JOHNSON, )  
PATRICK LYNCH, )  
ROBERTO VERTHELYI, )  
and FREDERICK SHEARIN, )  
on behalf of themselves and )  
a similarly situated class, )

Plaintiffs, )

vs. )

No. 13-2777

W2007 GRACE ACQUISITION I, INC., )  
TODD P. GIANNOBLE, GREGORY FAY, )  
BRIAN NORDAHL, DANIEL E. SMITH, )  
MARK RICKETTS, W2007 GRACE I, )  
LLC, WHITEHALL PARALLEL GLOBAL )  
REAL ESTATE LIMITED PARTNERSHIP )  
2007, W2007 FINANCE SUB, LLC, )  
PFD HOLDINGS, LLC, THE GOLDMAN )  
SACHS GROUP, INC., and GOLDMAN )  
SACHS REALTY MANAGEMENT L.P., )

Defendants. )

---

ORDER

---

Before the Court is David Johnson, Patrick Lynch, Roberto Verthelyi, and Frederick Shearin's (collectively, "Named Plaintiffs") April 29, 2016 Motion for Distribution of the Net Seller Class Settlement Fund (the "Motion"). (Motion, ECF No. 137.) Named Plaintiffs seek an Order authorizing distribution

of the Net Seller Class Settlement Fund<sup>1</sup> in this class action, which was settled pursuant to the terms of the Stipulation dated October 8, 2014. (Stipulation, ECF No. 77-1.) The Court held a Final Approval Hearing on the fairness of the terms and conditions of the Settlement on September 11, 2015, at which the members of the Classes and objectors were provided an opportunity to be heard. (Minutes, ECF No. 125.) With the entry of a Final Approval Order and Judgment on December 4, 2015, the Court approved the Settlement. (Final Approval Order, ECF No. 135.) The Final Approval Order found, inter alia, that the Settlement was fair, reasonable, and adequate. (Id.) The Court reserved jurisdiction over all matters for purposes of effecting the Settlement, including all matters relating to the administration, consummation, enforcement, and interpretation of the Settlement and Plan of Allocation. (Id.)

Class counsel has been notified by Angeion Group LLC ("Angeion"), the claims administrator, that Angeion has completed, in accordance with the Stipulation and Plan of Allocation, the receipt and processing of the claims by the members of the Seller Class, and Angeion is prepared to make the proposed allocation and distribution of the Net Seller Class Settlement Fund to the Authorized Claimants in accordance with

---

<sup>1</sup> For purposes of this Order, the Court adopts all defined terms as set forth in the Stipulation and Plan of Allocation unless otherwise defined in this Order. (Stipulation, ECF No. 77-1; Plan of Allocation, ECF No. 77-6.)

the Stipulation and Plan of Allocation, upon Court approval.

On April 29, 2016, Class Counsel filed a declaration of Charles E. Ferrara, Director of Operations for Angeion, verifying the actions taken by Angeion in administering the Seller Class claims, including the processing of Proof of Claim Forms and the calculation of Recognized Losses. (Ferrara Decl., ECF No. 137-1.) Class Counsel and Angeion have completed all steps required for the administration, review, processing, and validation of claims set forth in the Stipulation and Plan of Allocation. (Id. at ¶¶ 6-17.)

#### **I. Claims**

Angeion received and processed 449 claims submitted on behalf of Claimants. (Id. at ¶ 9.) Angeion recommends that 206 of those claims be approved by the Court for payment in whole or in part ("Valid Claims"). (Id. at ¶¶ 19-20.) The Valid Claims listed in Part One of Exhibit C to the Ferrara Affidavit are APPROVED.

Angeion recommends that eight (8) additional claims that were not timely submitted be approved because they are otherwise valid and no delay has resulted from their provisional acceptance ("Untimely Valid Claims"). (Id. at ¶¶ 20-21.) It recommends that the cut-off date for the submission of Proof of Claim Forms be revised so that the Court does not accept any claims submitted after the preparation of the Motion, meaning

that the Court would exclude any late claims other than those identified in Exhibit C to the Ferrara Affidavit as untimely. (Id. at ¶ 21.)

The Court has jurisdiction over the allowance, disallowance, or adjustment of any claim by members of the Classes and all determinations of each Claimant's share of the Net Seller Class Settlement Fund are subject to the Court's review and approval. (Final Approval Order, ECF No. 135 at ¶¶ 18,23-24.) Courts have discretion to allow late claims to be eligible for the distribution of settlement funds. Wade v. Kroger, Co., No. 3:01CV-699-R, 2008 WL 4999171 at \*2 n.2 (W.D. Ky. Nov. 20, 2008). The Untimely Valid Claims represent a small percentage of the claims that Angeion has recommended for approval. The Untimely Valid Claims will not cause any delay in distribution. The Untimely Valid Claims listed in Part Two of Exhibit C to the Ferrara Affidavit are APPROVED. The proposed revised cut-off date is APPROVED.

Angeion recommends that 197 claims be rejected ("Rejected Claims"). (Ferrara Decl., ECF No. 137-1 at ¶ 23.) Those claims are recommended for rejection in whole or in part for one of four reasons: (1) the claim did not involve a sale during the Seller Class Period; (2) the claim was duplicative; (3) the claim had uncured deficiencies; or (4) the claim was ineligible because the Claimant was excluded from the Seller Class under

the terms of the Stipulation. (Id.) Angeion notified those Claimants with ineligible claims and provided them with the opportunity to cure the claims' deficiencies if possible. (Id. at ¶¶ 11-17.) After the claims had been processed and Claimants had been provided the opportunity to cure deficiencies, the claims were reviewed a second time under a "quality assurance review" to ensure that they were properly classified. (Id. at ¶ 17.) All reasons provided for excluding the Rejected Claims are in accordance with the terms of the Stipulation and the Plan of Allocation. The Rejected Claims listed in Part Three of Exhibit C to the Ferrara Affidavit are REJECTED.

Angeion recommends that an additional thirty-eight (38) claims be determined to result in a Recognized Loss amount of zero under the terms of the Plan of Allocation ("No Loss Claims"). (Id. at ¶ 25.) Those Claimants will not receive a share of the Net Seller Class Settlement Fund and were notified of that determination. (Id.) Angeion's determination about the No Loss Claims listed in Part Four of Exhibit C to the Ferrara Affidavit is APPROVED.

## **II. Expenses**

The Final Approval Order provides that Class Counsel shall apply to the Court for an approval of any fees and expenses not previously paid, including the fees and expenses of the Claims Administrator. (Final Approval Order, ECF No. 135 at ¶ 24.)

The Stipulation provides that there may be an award of up to \$150,000 in Seller Class-related litigation expenses apart from the fees and expenses of the Claims Administrator, to be paid out of the Seller Class Settlement Fund after Court approval. (Stipulation, ECF No. 77-1 at ¶ 45.)

To date, Angeion has been paid \$23,349.44 for its services. (Ferrara Decl., ECF No. 137-1 at ¶ 33.) Angeion has since incurred costs totaling \$8,763.38 and estimates additional costs of \$4,711.30 through the completion of the administration of the Settlement. (Id. at ¶¶ 34-35.) Class Counsel requests that the Court approve \$13,474.68 to be paid to Angeion. Invoices from Angeion have been submitted in support of the request. (Angeion Invoices, ECF No. 137-2 at 23-28.) The request is APPROVED.

In the Final Approval Order, the Court authorized \$144,481.37 in Seller Class-related litigation expenses. (Final Approval Order, ECF No. 135 at ¶ 20.) Class Counsel requests an additional \$5,000 be paid to GlenDevon Group, Inc. ("GDG") for its assistance to Class Counsel and Angeion with the Plan of Allocation and claims. (Motion, ECF No. 137 at 14.) Invoices from GDG have been submitted in support of the request. (GDG Invoices, ECF No. 137-3 at 2-3.) The total amount of Seller Class-related litigation expenses is less than the \$150,000 authorized by the Stipulation. The request that GDG be paid \$5,000 is GRANTED.

### III. Conclusion

The Court has considered all submissions presented as to the Motion and for good cause shown the Court ORDERS, FINDS, CONCLUDES, ADJUDGES, AND DECREES AS FOLLOWS:

1. The administrative recommendations of Angeion about the claims to the Seller Class Settlement Fund, as set forth in the Motion and in the Ferrara Declaration and its accompanying Exhibits, are APPROVED.

2. Angeion shall distribute to each accepted Authorized Claimant its pro rata share of the Net Seller Class Settlement Fund, as computed and reported by Angeion and as set forth in the Ferrara Declaration and its accompanying Exhibits.

3. No additional claims received by Angeion shall be processed or allowed.

4. Class Counsel shall make the following payments:

- a. \$8,763.38 payment from the Net Seller Class Settlement Fund to Angeion for costs incurred in administering the Net Seller Class Settlement Fund;
- b. \$4,711.30 payment of estimated costs that Angeion expects to incur through distribution of the Net Seller Class Settlement Fund and completion of administration; and,

c. \$5,000 for work performed by GDG in advising Angeion and Class Counsel about the application of the Plan of Allocation.

5. Plaintiffs, Class Counsel, Angeion, and all persons who were involved in the review, verification, calculation, tabulation, or any other aspect of the processing of the claims filed, or who are otherwise involved in the administration or taxation of the Net Seller Class Settlement Fund, are hereby released and discharged from any and all claims arising out of such involvement, and pursuant to the release terms of the Settlement, all Class members or any other persons, whether or not they are to receive payment from the Net Seller Class Settlement Fund, are hereby barred from making any further claim against the Net Seller Class Settlement Fund beyond the amount allocated to them by the Settlement approved by the Court.

6. Angeion is authorized to discard paper copies of Proof of Claim Forms and claim records one (1) year after final distribution of the Net Seller Class Settlement Fund and to destroy electronic copies of Proof of Claim Forms and claim records three (3) years after final distribution of the Net Seller Class Settlement Fund.

7. The Court retains jurisdiction over any further application or matter which may arise in the administration of this Settlement.



So ordered this 6th day of June, 2016.

s/ Samuel H. Mays, Jr.  
SAMUEL H. MAYS, JR.  
UNITED STATES DISTRICT JUDGE