

SO ORDERED.

SIGNED December 21, 2022.





JOHN W. KOLWE
UNITED STATES BANKRUPTCY JUDGE

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF LOUISIANA**

**IN RE:
LOUISIANA SAFETY ASSOCIATION
OF TIMBERMEN - SELF INSURED FUND
DEBTOR**

CASE NO. 15-81004

CHAPTER 7

**T. BRETT BRUNSON AS TRUSTEE FOR
LOUISIANA SAFETY ASSOCIATION OF
TIMBERMEN – SELF INSURED FUND**

**ADVERSARY PROCEEDING
No. 17-08003**

Versus

**ASCENSION READY MIX, INC.,
O'NEALGAS, INC.,
E.A. HINTON WELL SERVICING INC., and
ALFORD MOTORS, INC.
(On behalf of themselves
and others similarly situated)**

ORDER AND REASONS

Before the Court is Class Counsel's *Motion for Award of Attorneys' Fees and Litigation Expenses* [Doc. 237] ("**Fee Motion**"). On October 6, 2022, this Court held a Fairness Hearing to consider, among other matters¹, the *Fee Motion*. No objections to the *Fee Motion* were filed. Having considered the *Fee Motion*, including the supporting memorandum and affidavits, the record of this matter, and applicable law, the Court will grant the *Fee Motion*.

I. BACKGROUND

This adversary proceeding was commenced by T. Brett Brunson, in his capacity as the trustee ("**Trustee**"), appointed in the above-captioned chapter 7 case ("**Bankruptcy Case**") of Louisiana Safety Association of Timbermen – Self Insured Fund ("**Timbermen**"). Prior to the Bankruptcy Case filing, Timbermen was a group self-insurance fund that provided workers' compensation benefits to employees of Timbermen members. The Trustee filed this action alleging Timbermen's members have statutory and contractual solidary liability for claims filed against Timbermen's bankruptcy estate. Rather than suing each member individually, the Trustee filed this proceeding as a defendant class action against all Timbermen members; and, on August 22, 2018, this adversary proceeding was certified as a defendant class action.

On March 30, 2022, the Trustee and the class representatives filed a joint motion for preliminary approval of a settlement of the class action, which motion was granted [Doc. 234] on May 19, 2022. Thereafter, the parties filed a joint motion for final approval of the class action settlement [Doc. 251], which motion was also granted by this Court.

¹At the Fairness Hearing, the Court also considered (a) *the Amended Joint Motion for Final Approval of Class Action Settlement Agreement* [Doc.251] and, (b) *the Motion for Entry of Order Authorizing Compromise under Bankruptcy Rule 9019* [BK Doc.1234], both of which were ruled upon through separate orders of this Court.

II. LAW AND ANALYSIS

Attorneys' fees and costs, authorized by law or agreement of the parties, may be awarded in a certified class action if reasonable. Fed. Rule Civ. Pro. 23(h). The Fifth Circuit has established certain criteria to assess the reasonableness of attorneys' fees and costs. *Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974). The Court considered the following *Johnson* factors in its decision to grant the *Fee Motion*.

A. Time and Labor Required

Class Counsel have spent over 1,900 hours litigating this case, which time was spent drafting pleadings, investigating Bankruptcy Case claims, researching legal issues, reviewing discovery, consulting with experts and ultimately negotiating a beneficial settlement for the Class. Thus, this factor weighs in favor of approval.

B. Novelty and Difficulty of the Issues

This case is a defendant class action, within a bankruptcy proceeding, which involves liabilities relating to participation in a group self-insurance workers' compensation fund. First, due to the rarity of defendant class actions, the nature of this class action, itself, presented novel issues. Additionally, the involvement of a nontraditional insurance entity, with limited state regulations, and its pending bankruptcy proceeding created additional complexities in the litigation. Accordingly, this factor weighs in favor of approval.

C. Skill Required to Perform Legal Service Properly

The complex legal questions and the nature of the class action required Class Counsel to have specialized knowledge and legal skill in order to reach a favorable outcome. Specifically, Class Counsel were required to employ this legal skill and specialized knowledge of bankruptcy and workers' compensation law in interpreting, among other things, laws and regulations for which

little guidance in jurisprudence exists. In addition, although such cases are rare, Class Counsel have prior experience with bankruptcy matters involving group self-insurance funds. This factor also weighs in favor of approval.

D. Preclusion of Other Employment

Representation of the defendant class required Class Counsel to invest a significant amount of time, energy, and financial resources into the litigation. As a result of such devotion of time and resources, Class Counsel were required to limit work on other matters for other clients. Thus, this factor weighs in favor of approval.

E. Customary Fee in Similar Actions

When an attorney's billing rate is not questioned, it is *prima facie* reasonable. *La. Power & Light Co. v. Kellstrom*, 50 F.3d 319 (5th Cir. 1995). Class Counsel aver that their hourly billing rates for this case were consistent with or lower than reasonable and customarily hourly rates charged by other professionals of equal education and experience and in matters of similar complexity, scope and significance; and, no party has contested such billing rates. This factor weighs in favor of approval.

F. Whether the Fee is Fixed or Contingent

Class Counsel received initial funding for fees and expenses; however, a considerable portion of their fees and expenses will be paid from settlement recoveries. Thus, while Class Counsel agreed to represent the Class on an hourly fee basis, the fee is partially contingent since there is and can be no assurance that there will be funds available to pay the attorneys in the event insufficient funds are recovered from Class members. Accordingly, this factor weighs in favor of approval.

G. Time Limitations

Class Counsel have had to perform services under time constraints given the date of engagement and approval by this Court, and the timing of certain motions and matters of interest herein. Thus, this factor weighs in favor of approval.

H. Amount Involved and Results Obtained

Class Counsel assisted Class members in significantly reducing their potential liability from the \$40 million claimed by the Trustee to a maximum liability under the Settlement of approximately \$12,800 per each settling member. In addition, the Settlement provides for Class Counsel fees to be shared ratably among Class members, thereby significantly reducing attorneys' fees which would have otherwise been incurred by a Class member through its individual defense against the Trustee's claims. Therefore, this factor weighs in favor of approval.

I. Experience, Reputations and Ability of Attorneys

The Court has no reason to question the experience, reputation, and ability of the attorneys in this case, all of whom are dedicated professionals with demonstrated commitments to their clients. This factor weighs in favor of approval.

J. Undesirability of the Case

Uncertainties regarding payment of Class Counsel fees, coupled with the complex and novel questions presented in this case may likely have made this case "undesirable" to many law firms. Thus, this factor weighs in favor of approval.

K. Nature and Length of Professional Relationship

Class Counsel have represented the Class Representatives in this matter for over four years; and, all services provided by counsel were rendered to and/or for the benefit of the Class certified herein. This factor also weighs in favor of approval.

L. Costs

Finally, Class Counsel have itemized litigation expenses for which reimbursement was sought through the *Fee Motion*. The Court has reviewed the requests and finds them to be reasonable and typical of such matters. Thus, the Court awards reimbursement of the full amount of litigation expenses incurred by Class Counsel.

III. CONCLUSION

The Court finds that the *Johnson* factors support Class Counsel's requested fee award, in light of the difficulties in litigating this case, the skill and expertise required, the result ultimately obtained and the fees typically obtained by attorneys in similar legal matters.

Based on the foregoing,

IT IS ORDERED that Class Counsel's *Motion for Award of Attorneys' Fees and Litigation Expenses* is hereby **GRANTED**; and, Class Counsel fees of \$500,000.00 and expenses of \$2,973.71 are approved.

IT IS FURTHER ORDERED that Class Counsel shall be entitled to receive reimbursement of all expenses approved herein; and, payment of up to \$200,000.00 in attorneys' fees in accordance with the terms set forth in this Court's *Order and Reasons* granting the *Amended Joint Motion for Final Approval of Class Action Settlement Agreement* [Doc. 251].

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