

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

IN RE: AQUEOUS FILM-FORMING FOAMS PRODUCTS LIABILITY LITIGATION	MDL No. 2:18-mn-2873-RMG This Document relates to <i>Campbell v. Tyco Fire Products LP et al.</i>, No. 2:19-cv-00422-RMG
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ORDER APPROVING ATTORNEYS' FEES AND COSTS

WHEREAS Plaintiffs RICHARD CAMPBELL and JOAN CAMPBELL (“Plaintiffs”), both individually and on behalf of all Settlement Class Members, through their attorneys of record, having timely filed their Motion For Plaintiffs’ Counsel’s Attorneys’ Fees and Costs (Dkt. No. 1255) and the Motion for Final Approval of Fees and Costs (Dkt. No. 1557) (hereinafter the “Motions”);

WHEREAS, by order dated January 25, 2021 (“Preliminary Approval Order”), this Court granted preliminary approval of the proposed class action settlement between the Parties;

WHEREAS, the Court also provisionally certified a Settlement Class and appointed Class Counsel and a class representative for settlement purposes only, and approved the procedure for giving notice and the forms of notice.

WHEREAS, on May 24, 2021, the Court held a duly noticed final fairness hearing (“Fairness Hearing”) to consider, among other things: (1) whether the terms and conditions of the settlement and Settlement Agreement (the “Settlement Agreement” or “Agreement”) are fair, reasonable, and adequate; (2) whether the Settlement Class should be finally certified for purposes of settlement only; (3) whether a judgment should be entered dismissing Plaintiffs’ complaint on the merits and with prejudice in favor of Defendants and against all persons or entities who are Settlement Class Members; and (4) whether and what amount to award attorneys’ fees and expenses to counsel for the Settlement Class, as requested in the Motions;

WHEREAS, the Court considered all matters submitted to it at the Fairness Hearing and otherwise, including all information provided by the Parties with the Motions and all timely objections and responses to the Motions from Class Members (“Objections”), and it appears that notice substantially in the form approved by the Court in the Preliminary Approval Order was given in the manner that the Court ordered;

WHEREAS, the settlement was the result of extended, arms’-length negotiations;

WHEREAS, counsel for the parties are highly experienced in this type of litigation, with full knowledge of the risks inherent in this Action, and independent investigations by counsel for the parties suffices to enable the parties to make an informed decision as to the fairness and adequacy of the Settlement; and

WHEREAS, without admitting any liability, claim or defense the Parties determined that it was mutually advantageous to settle this Action and avoid the costs, delay, uncertainty and business disruption of ongoing litigation;

WHEREAS, upon careful consideration of all information provided with the Motions and all Objections to the Motions in the context of the overall Settlement, the Action, this MDL, and applicable law;

IT IS HEREBY ORDERED THAT:

1. Having considered the Motions, Objections, facts, arguments, and the applicable legal authorities, the Court finds that Plaintiffs’ Motions are **GRANTED**. The Court hereby FINDS that the requested award of 33.33% of the total cash settlement value, inclusive of the 9% total MDL common benefit attorneys’ fee and expense assessments required pursuant to Case Management Order No. 3 entered in this MDL on April 26, 2019 (Dkt. No. 72) (“CMO 3”) (the

“Common Benefit Assessment”), and as agreed pursuant to Section 6.8 of the Settlement Agreement, is APPROVED.

2. Having reviewed the Motions and supporting documents from Plaintiffs’ counsel detailing the nature of the Action and the work/expense invested by such counsel, the Court finds that there is ample evidentiary support for a finding that the proposed 33.33% fee is a reasonable percentage of the common fund (*i.e.* the \$15 million Total Settlement value) in the context of this Action and MDL.

3. Plaintiffs’ request for attorneys’ fees is reasonable and in accordance with *Barber v. Kimbrell’s Inc.*, 755 F.2d 216 (4th Cir. 1978), which sets out the relevant factors in making the determination. These include: (1) the time and labor expended; (2) the novelty and difficulty of the questions raised; (3) the skill required to properly perform the legal services rendered; (4) the attorney's opportunity costs in pressing the instant litigation; (5) the customary fee for like work; (6) the attorney's expectations at the outset of the litigation; (7) the time limitations imposed by the client or circumstances; (8) the amount in controversy and the results obtained; (9) the experience, reputation and ability of the attorney; (10) the undesirability of the case within the legal community in which the suit arose; (11) the nature and length of the professional relationship between attorney and client; and (12) attorneys' fees awards in similar cases.

4. A review of the *Barber* factors that are discussed at length in the Motions demonstrates that the proposed 33.33% fee is reasonable and should be approved. With respect to the time and labor required, Plaintiffs’ counsel collectively invested hundreds of hours toward successful resolution of this Action and the issues presented in the Litigation were novel, difficult and complex, as explained in the Motions. Given the complexity of the factual and legal issues

presented in this case, the preparation, prosecution, and settlement of this case required significant skill and effort on the part of Plaintiffs' counsel.

5. Courts often award fees in class actions that are in the range of 30% or more. *LandAmerica 1031 Exch. Servs. v. Chandler*, No. MDL No. 2054, 2012 U.S. Dist. LEXIS 159630 (D.S.C. Nov. 7, 2012) (noting the survey of common fund fee awards in the Fourth Circuit and elsewhere by the Honorable Liam O'Grady). *See e.g., In re Heritage Bond Litig.*, No. 02-ML-1475 DT(RCx), 2005 U.S. Dist. LEXIS 13555, at *61 (C.D. Cal. June 10, 2005) (awarding 33 1/3% of \$27.783 million settlement); *In re Ravisent Techs., Inc. Sec. Litig.*, No. 00-CV-1014, 2005 U.S. Dist. LEXIS 6680, at *51 (E.D. Pa. Apr. 18, 2005) (awarding attorneys' fees of one-third of \$7 million settlement); *In re Corel Corp. Inc. Sec. Litig.*, 293 F. Supp. 2d 484, 498 (E.D. Pa. 2003) (awarding 33 1/3% of \$7 million settlement); *In re E.W. Blanch Holdings, Inc. Sec. Litig.*, No. 01-258, 2003 U.S. Dist. LEXIS 26402, at *10 (D. Minn. June 16, 2003) (awarding 33 1/3% of \$20 million settlement); *Faircloth v. Certified Fin. Inc.*, No. 99-3097, 2001 U.S. Dist. LEXIS 6793, at *37 (E.D. La. May 16, 2001) (awarding attorneys' fees of 35% of \$1.6 million settlement fund); *In re Eng'g Animation Sec. Litig.*, 203 F.R.D. 417, 423-24 (S.D. Iowa 2001) (awarding attorneys' fees of \$2.5 million, or one third of common fund); *In re Unisys Corp. Sec. Litig.*, No. 99-5333, 2001 U.S. Dist. LEXIS 20160, at * 10 (E.D. Pa. Dec. 6, 2001) (approving fee of 33% as "fair and reasonable"); *In re Safety Components Int ', Inc. Sec. Litig.*, 166 F. Supp. 2d 72, 101-02 (D.N.J. 2001) (approving fee request of one-third of \$4.5 million settlement); *Neuberger v. Shapiro*, 110 F. Supp. 2d 373, 386 (E.D. Pa. 2000) (approving one-third of \$4,325,000 settlement fund).

6. The Court has carefully reviewed and considered all timely Objections from Class Members to the Motions, along with all related information provided during the final Fairness

Hearing on May 24, 2021, and finds no issue raised that demonstrates that the requested fees are unreasonable or inappropriate in the context of this Action and MDL or under the applicable law.

7. For these reasons, the Court finds the 33.33% contingency fee requested in connection with the *Campbell* Settlement is well within the range of reasonableness for cases of the magnitude and complexity, and the Court hereby approves the award of Plaintiffs' attorneys' fees in the amount of \$4,999,500.00 and costs in the amount of \$393,754.60 as requested in the Motions.

8. In the event there are additional costs related to the final processing, administration and disbursement of the claims (including, but not limited to, check disbursements and lien resolution), the Settlement Administrator is hereby authorized to approve such additional costs at the Settlement Administrator's discretion and with approval of Class Counsel.

9. The Settlement Administrator is, therefore, ORDERED to pay Plaintiffs' counsel attorneys' fees in the amount of \$4,999,500.00 and costs in the amount of \$393,754.60 (collectively, the "Total Award") upon receipt of the Settlement Amount in accordance with the terms of the Amended Settlement Agreement, and the \$1,350,000.00 Common Benefit Assessment shall be paid from and deducted from that Total Award, in the manner required under CMO 3.

AND IT IS SO ORDERED.

s/ Richard Mark Gergel
Richard Mark Gergel
United States District Judge

August 4, 2021
Charleston, South Carolina