



Final Approval and addressed the objectors' concerns [Doc. No. 187]. An Omnibus Reply in Support of Plaintiffs' Motions was also filed [Doc. No. 186]. Detailed records in support of Plaintiffs' Motion for Attorneys' Fees were filed with the Court on Thursday, October 3, 2019 [Docs. No. 189, 190].

On Monday, October 7, 2019, the Court held a hearing on Plaintiffs' Motions. The Court heard arguments from Plaintiffs, Defendants, Objector Morgan, through counsel M. Frank Bednarz, and Objector Kennedy, through counsel Robert H. Solomon.

### **BACKGROUND**

This is a consolidated multidistrict class action lawsuit where Plaintiffs filed suit in various jurisdictions against Defendants and in some cases also against retailers (the "Consolidated MDL Lawsuit"). Plaintiffs alleged that certain Samsung top-load washing machines had experienced detachment of their tops from the washing machine chassis and drain-pump failure during operation.

After negotiations, on June 1, 2018, Plaintiffs, Defendants, and the defendant retailers (collectively, the "Parties") filed with the Court a Settlement Agreement to fully resolve the Consolidated MDL Lawsuit. This Court held a preliminary approval hearing on November 29, 2018. And on January 8, 2019, the Court entered an Order [Doc. No. 138] granting preliminary approval to the Settlement Agreement and provisionally approving certification of a nationwide settlement class.

Plaintiffs' Unopposed Motion for Final Approval of Settlement and Motion for Attorneys' Fees, along with all supporting and opposing briefs and documentation, followed.

## DISCUSSION

Having reviewed the Motions and all related filings, the Court heard multiple presentations at the Fairness Hearing. During the Fairness Hearing, the Court began by earmarking for the Parties some concerns and issues the Court identified in light of the posture of the proceedings at the present time. The Court noted the following:

1. A shift in the valuation of the benefits to the class under the Settlement Agreement from what was discussed at the hearing for preliminary approval. At the preliminary approval hearing, the Court noted, the Parties indicated the Settlement Agreement would have a floor value of \$65 million. *See* Doc. No. 135 at 22, 27. That number is now purportedly between \$7.9 and \$13.7 million. *See* Doc. No. 186 at 2. The Court asked the Parties to explain each component of what makes up the value to the class under the Settlement Agreement. *See* Fairness Hearing Transcript at 6.
2. The Court also asked the Parties to address the valuation of future benefits covered by Ms. Lucy P. Allen's Declaration [Doc. No. 186, Ex.7] (the "Allen Declaration"). The Court noted that although the Allen Declaration values the individual extended warranty aspects, it fails to set forth an aggregate range. Further, the Court was unable to duplicate the math to arrive at the aggregate value the Parties ascribe to the warranties.
3. The Court asked the Parties to address the requirements for class members who experienced past top separation as opposed to class members who may experience top separation in the future, as those two groups are arguably treated

differently. From a practical standpoint, there is a more exacting documentation requirement for past failures. Those class members who experienced past failures may not have appreciated the need for retaining documentary evidence and other evidence, such as a photograph. The Court asked the Parties to address if and how the claims administration process might address this.

4. Further, the Court inquired about the criteria the claims administrator is applying in evaluating supporting documentation, as there is no explicit listing of criteria triggering the denial of a claim.
5. The Court asked the Parties to address the 30-day cure period for invalid claims. That cure period runs from the date of issuance of claim denial. *See* Doc. No.9, Ex. 2 at 61. The Court asked the Parties to define “issuance.”
6. The Court inquired as to the number of invalid claims that have been submitted within the allotted 30-day cure period, according to data reported by the claims administrator.
7. The Court asked if there was a link to the settlement site on Samsung’s general website, and inquired if there are requirements that the settlement website and the call center remain live through the end of any future benefit period.
8. The Court noted that the three-year extended warranty period with respect to the drain pumps began to run at the time of notice of the Settlement. Doc. No. 92, Ex. 2 at 61. The fairness of the Settlement Agreement is still being evaluated, and the three-year period is approaching a two-year period. The Court inquired as to whether the shortened warranty period should and could be ameliorated.

9. In this case, there were about 2.8 million direct mailings that occurred, achieving what is reportedly over a 90-percent notice rate. Doc. No. 152 at 5. Yet only about 77,000 claims have been received and only about 65,000 of those are considered valid at this time. *See* Doc. No. 186, Ex. 3,4. The Court would like for the Parties to address the effectiveness of the mailings and provide data on returned or otherwise unsuccessful mailings.
10. The Court noted that the voucher or coupon component of this Settlement Agreement has been criticized by objectors. The Court asked the Parties to distinguish the relief to the class provided by the Settlement Agreement from the relief in settlements rejected under Rule 23. *See, e.g., In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prod. Liab. Litig.*, 55 F.3d 768, 784 (3d Cir. 1995) (settlement approval overturned where claimants got \$1,000 coupons on the purchase of a new GM truck; a “sophisticated GM marketing program”). *But see In re Compact Disc Minimum Advertised Price Antitrust Litig.*, 292 F. Supp. 2d 184, 186–88 (D. Me. 2003) (proposed voucher program added identifiable value to the settlement, and thus would be approved). Further, the Court asked the Parties to address what percentage of the claimants are taking advantage of the transferability aspect of the vouchers.
11. Finally, the Court instructed the Parties to disclose any side agreements that require reporting under Rule 23. Fed. R. Civ. P. 23(e)(3).
12. As detailed records supporting Plaintiffs’ requests for attorneys’ fees were filed on Thursday, October 3, 2019, and the hearing took place on Monday, October

7, 2019, the Court is not yet prepared to address the request for attorneys' fees, and, in any event, such determination must also await a ruling on the Unopposed Motion for Final Approval of Settlement.

The Parties preliminarily responded to the Court's concerns during the Fairness Hearing. Before a final determination as to the fairness and adequacy of the Settlement Agreement can be made, however, the Court finds additional follow-on briefing is necessary to fully address the Court's concerns in a more deliberate way.

**IT IS THEREFORE ORDERED** that the Parties submit supplemental briefs pursuant to the following schedule. Plaintiffs are to file an additional brief addressing the Court's concerns, as expressed during the Fairness Hearing and detailed herein, within twenty-one (21) days of the issuance of this Order. Defendants and Objectors who have filed timely objections shall have twenty-one (21) days to respond. Replies may be filed only by leave of Court. The substantive content of the briefs must be limited to addressing the Court's concerns, as detailed herein.

**IT IS SO ORDERED** this 11<sup>th</sup> day of October, 2019.



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TIMOTHY D. DeGIUSTI  
Chief United States District Judge