

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

CATHLEEN SWEENEY, JANICE JARRETT,	)	
KEYSHER FRANKLIN, TRISHA RICKAY	)	
ESTELL, and BARBARA SHIPES, on their own	)	
behalf and as representative plaintiffs on behalf of	)	
all similarly situated persons,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No. 00-674-RRM
	)	
CRESCENT REAL ESTATE EQUITIES	)	
COMPANY, CRESCENT REAL ESTATE	)	
EQUITIES LIMITED PARTNERSHIP,	)	
CRESCENT REAL ESTATE EQUITIES, LTD.,	)	
and CRESCENT OPERATING, INC.,	)	
	)	
Defendants.	)	

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re	)	
	)	
CHARTER BEHAVIORAL HEALTH	)	Case Nos. 00-00989 (RRM)
SYSTEMS, L.L.C., et al.,	)	through 00-01089 (RRM)
	)	Chapter 11
Debtors and Debtors-in-Possession	)	Jointly Administered
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	)	
JOANN ALLEN, et al., and on behalf of all other	)	
persons similarly situated,	)	
	)	
Plaintiffs,	)	Adversary Proceeding No.
	)	00-562 (RRM)
v.	)	
	)	
CHARTER BEHAVIOR HEALTH	)	

SYSTEMS, L.L.C., et al., )  
 )  
Defendants. )

**ORDER APPROVING CLASS COUNSEL'S MOTION FOR AWARD OF ATTORNEYS' FEES AND EXPENSES**

Class counsel and defendants in these actions agreed to a Stipulation of Settlement on August 8, 2001. On October 19 and November 5, 2001, the court certified the class pursuant to Federal Rule of Civil Procedure 23(b)(3), appointed class counsel, approved notice dissemination, fixed dates for class members to opt-out and object to the settlement, and granted preliminary approval to the Stipulation of Settlement. On this date, the court has granted final approval of the Stipulation of Settlement, finding it to be fair, just, and reasonable. Presently before the court is Class Counsel's motion for award of attorneys' fees and expenses.

The plaintiff class is comprised of former employees of Charter or one of its subsidiaries and affiliates. The class seeks recovery under the Worker Adjustment and Retraining Notification Act (the "WARN Act"), 29 U.S.C. § 2101 et seq. Those claims were estimated by Class Counsel, with the assistance of a forensic accounting firm, to be valued at \$24,567,989. Plaintiffs filed Proofs of Claim in the bankruptcy proceeding against Charter and its related debtor entities (Bankr. Adv. Proceeding No. 00-562-RRM). Plaintiffs also brought a separate suit against Crescent Real Estate Equities Company and related entities (Civil Action No. 00-674-RRM), arguing that Crescent's

interest in Charter was sufficient to subject it to liability for plaintiffs' WARN Act claims under the "single employer" doctrine. Sec 20 C.F.R. § 639.3(a)(2). As a result of the efforts of Class Counsel and cooperating attorneys, the Stipulation of Settlement will provide a Distribution Fund valued between \$13,904,937 and \$15,954,639 for the satisfaction of plaintiffs' WARN Act claims. The exact size of the fund is unknown at this time because it will depend on the cash available to Charter to compensate its general unsecured claimants.

The Distribution Fund is divided into smaller funds for distribution pursuant to the different priorities assigned the claims in Charter's bankruptcy. Under the Stipulation of Settlement, Charter will contribute \$2 million towards post-petition WARN Act claims entitled to administrative priority. Administrative claimants will also recover another \$17,680 to \$9,078 as a general unsecured claim. Because the total estimated administrative claims are valued at approximately \$2,238,919, the Settlement will pay those claims at approximately 90% of their value.

Charter will also pay \$8,169,029 into the settlement fund for WARN Act claimants with wage priority claims under § 507(a)(3) of the Bankruptcy Code. See 11 U.S.C. § 507(a)(3). Plaintiffs' claims with this priority are estimated to be \$11,460,443. Therefore, the Settlement represents a recovery of 71.2% of the value of those claims.

Pursuant to the Stipulation of Settlement, both Crescent and Charter will pay into the Distribution Fund for the benefit of the \$10,868,627 in general, unsecured WARN

Act claims. Crescent will pay \$3,726,830. Charter's expected payment will be between \$2,041,100 and zero, depending on the funds it has available. Thus, the total fund available for the benefit of the general, unsecured claims will be between \$5,767,930 and \$3,726,830, resulting in a recovery between 53% and 34.3% of the total. Plaintiffs with general, unsecured WARN Act claims will recover a significantly larger percentage of their claims than ordinary unsecured claimants, which are expected to recover between 7.4% and 3.8% of their claims.

Furthermore, the Stipulation of Settlement requires Charter to contribute \$2,588,153 into the 401(k) plans of its terminated employees. Some claimants with non-WARN Act claims based on Charter's failure to provide severance or vacation pay are also recognized by the Settlement. Charter will pay between \$348,618 and \$179,020 on these claims. Class Counsel does not seek to recover attorneys' fees based on these non-WARN Act recoveries.

Class Counsel seeks to recover fees in the amount of one-third of the Distribution Fund created by the Stipulation of Settlement for the WARN Act claims. At this percentage of the recovery, the total attorneys' fees request is estimated to be between \$4.63 million and \$5.31 million. Because the total recovery is uncertain, Class Counsel has requested that it be compensated concurrently with those distributions made to the class.

This court has the authority to approve the attorneys' fee award pursuant to

Federal Rule of Civil Procedure 23(e). “[A] thorough judicial review of fee applications is required in all class action settlements.” In re General Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig., 55 F.3d 768, 819 (3d Cir. 1995). Of the methods of calculating fees, “[t]he 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.’” In re The Prudential Ins. Co. of Am. Sales Practices Litig., 148 F.3d 283, 333 (3d Cir. 1998) (citing G.M. Trucks, 55 F.3d at 821). In evaluating a percentage-of-recovery fee application, the Third Circuit has directed courts should employ at least the following considerations.

- (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).

In this case, Class Counsel has provided an extensive recitation of how these factors, in addition to others, support its award of one-third of the Distribution Fund. On the first consideration, Class Counsel argues that its efforts have created a sizable fund of at least \$16 million, including the non-WARN Act claims benefitting 4,339 former Charter employees. In particular, Class Counsel notes that, because of its work, many class members will receive a large percentage of their claim despite their former

employer's bankruptcy. On the second consideration, Class Counsel submits that of the over 4,000 class members, only two have opted-out of the class, one of whom expressed that she was doing so because of the attorneys' fee request and the other on unexplained grounds. Furthermore, only one class member filed an objection, although Class Counsel argues that objector does not have a claim to WARN benefits.

Class Counsel focuses on the third, fourth, and fifth considerations under Gunter in support of its fees request. Class Counsel submits that it has exercised substantial skill and efficiency in both litigating the claims in and out of bankruptcy court and in the negotiations of a complex multi-party settlement. In particular, Counsel notes that litigating against the bankrupt Charter required significant creativity to include the non-debtor Crescent entities under the "single employer" doctrine. Class Counsel argues creativity was also required to craft a settlement that addressed the various priorities of the WARN Act claims and satisfied the concerns of the class, Charter, and its various creditors. Furthermore, Class Counsel submits that the "risk of non-payment" was particularly high in this action, given Charter's bankruptcy and the uncertainty attending whether Crescent could be held liable for the WARN claims as a "single employer."

Class Counsel argues that it has expended substantial time and resources litigating this action, thereby justifying its recovery of fees of one-third of the common fund. Class Counsel states it has devoted 4,977.4 hours on this matter, including the time of partners, associates, and paralegals, and that Cooperating Counsel has devoted another 707.4

hours, for a total of 5,684.8 hours. Finally, the last consideration under Gunter is the size of awards in similar cases. Class Counsel member John C. Lankenau, an experienced litigator of WARN claims, submitted an affidavit in support of the fee request in which he states that one-third fee recoveries are typical in WARN Act litigation. In particular, he cited at least four other cases in which his firm received one-third of the class recovery and declared that none of those cases contained the complexity of this action.

Finally, the court notes that in evaluating the reasonableness of the fee request, it can compare the requested attorneys' fees with the fees that would have been generated had counsel been compensated on an hourly basis. See In re Cendant Corp. Litig., 264 F.3d 201, 284-85 (3d Cir. 2001). Known as a lodestar cross-check, this analysis is intended "to ensure that the proposed fee award does not result in counsel being paid a rate vastly in excess of what any lawyer could reasonably charge per hour, thus avoiding a 'windfall' to lead counsel." Id. at 285. Class Counsel has constructed a lodestar cross-check using both its regular rates and those of bankruptcy practitioners in Delaware, as detailed in an October 8, 2001 article in The Deal. The lodestar for Class Counsel at their regular hourly rates is \$1,444,573, exclusive of the compensation of Cooperating Counsel or the value of time spent on the fee application. The court finds the hourly rates used to calculate this lodestar to be reasonable. Compared to the requested fee, a one-third recovery for Class Counsel would result in a multiplier of between 3.2 and 3.65 using the regular hourly rates. Using the lodestar for bankruptcy petitioners in Delaware,

\$1,460,525, the requested fee award would result in a multiplier of between 3.12 and 3.57.

Class Counsel has submitted also support for its payment of expenses in the amount of \$66,390.

For the reasons set forth, the court hereby finds the following:

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that:

1. The court finds the requested attorneys' fees and expenses to be fair and reasonable. The court notes that a number of the Gunter factors favor a recovery of one-third of the class's recovery. Particularly, Class Counsel faced substantial risk of non-payment in litigating these WARN Act claims against a bankrupt entity believed to be administratively insolvent. Class Counsel's efforts have created a substantial recovery for the class, both as a whole and on an individual basis. The court's conclusion on this point is buttressed by the sparsity of class members choosing to either opt-out or object to the settlement. While the WARN Act claims themselves were not significantly complex, Class Counsel's successful and comprehensive resolution of those claims required litigating both an adversary proceeding in bankruptcy and an action in the district court. Class Counsel also exercised expertise negotiating a complex settlement agreement.

While the court notes that granting Class Counsel's one-third fee request will result in a multiplier in excess of three and that some precedent suggests that three should be the outer boundary of a reasonable attorneys' fee award, see In re Cendant Corp.



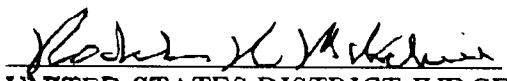
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PRIDES Litig., 243 F.3d 722, 742 (3d Cir. 2001), the court nonetheless finds a one-third recovery is not clearly excessive, given Class Counsel's the substantial risk of non-recovery and the relatively small amount by which the expected multiplier exceeds three. Therefore, the court concludes that the requested attorneys' fees and expenses are fair and reasonable.

2. The Court hereby awards Class Counsel attorneys' fees in the amount of thirty-three point three percent (33.3%) of each disbursement of money into the class's common fund, payable to the trust account of Gardner, Middlebrooks, Gibbons and Kittrell, P.C. (and thereafter to be distributed by that firm to itself and other Class Counsel pursuant to arrangements made among them).

3. Class Counsel's expenses shall be paid in the amount of \$66,390.00 from the remaining portion of the first disbursement of money into the class's common fund payable to the trust account of Gardner, Middlebrooks, Gibbons and Kittrell, P.C. to be distributed by that firm among other Class Counsel as appropriate.

**IT IS SO ORDERED.**

  
UNITED STATES DISTRICT JUDGE

DATED: March 18, 2002

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

CATHLEEN SWEENEY, JANICE JARRETT,	)	
KEYSHER FRANKLIN, TRISHA RICKAY	)	
ESTELL, and BARBARA SHIPES, on their own	)	
behalf and as representative plaintiffs on behalf of	)	
all similarly situated persons,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No. 00-674-RRM
	)	
CRESCENT REAL ESTATE EQUITIES	)	
COMPANY, CRESCENT REAL ESTATE	)	
EQUITIES LIMITED PARTNERSHIP,	)	
CRESCENT REAL ESTATE EQUITIES, LTD.,	)	
and CRESCENT OPERATING, INC.,	)	
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SYSTEMS, L.L.C., et al.,	)	through 00-01089 (RRM)
	)	Chapter 11
Debtors and Debtors-in-Possession	)	Jointly Administered
<hr/>	)	
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JOANN ALLEN, et al., and on behalf of all other	)	
persons similarly situated,	)	
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Plaintiffs,	)	Adversary Proceeding No.
	)	00-562 (RRM)
v.	)	
	)	
CHARTER BEHAVIOR HEALTH	)	

SYSTEMS, L.L.C., et al., )  
 )  
Defendants. )

**ORDER APPROVING STIPULATION OF SETTLEMENT**

These actions are brought by former employees of the debtors under the Worker Adjustment and Retraining Notification Act (the "WARN Act"), 29 U.S.C. §§ 2101 et seq. The plaintiffs are former employees of Charter Behavioral Health Systems, LLC or one of its subsidiaries. Charter and its subsidiaries (collectively, "Charter") filed a petition for protection under Chapter 11 of the Bankruptcy Code on February 16, 2000. Plaintiffs brought an adversary proceeding against Charter (Bankr. Adv. Proceeding No. 00-562-RRM) alleging that it violated the WARN Act by terminating its employees beginning in December 1999 without the 60 day notice required by 29 U.S.C. § 2102(a). Plaintiffs also brought a separate suit against Crescent Real Estate Equities Company and related entities on July 24, 2000 (Civil Action No. 00-674-RRM), alleging that Crescent's interest in Charter was sufficient to subject it to liability for plaintiffs' WARN Act claims under the "single employer" doctrine. See 20 C.F.R. § 639.3(a)(2).

On October 19 and November 2, 2001, the court entered orders approving the certification of a class under Federal Rule of Civil Procedure 23(b)(3), appointing class counsel, approving a notice dissemination plan, preliminarily approving the parties' Stipulation of Settlement, approving class notice, and fixing dates by which class

members may opt out of, comment on, or object to the settlement.

Presently before the court is the motion to approve the Stipulation of Settlement entered among the parties on August 8, 2001. The court, having considered the papers filed by the parties, hereby finds the following:

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that:

1. Upon consideration of the Motion of the Plaintiffs and Class Representatives for an Order Approving the Stipulation of Settlement dated as of August 8, 2001 with Class Counsel for the WARN Act Claimants, Debtors, Crescent, COPI, and the Committee (each as defined in the Stipulation of Settlement) (the "Motion"); and due and adequate notice having been given under the circumstances; no other notice needing to be given; and it appearing that the relief requested is fair, reasonable, and adequate to the Class; and after due deliberation and sufficient cause appearing therefor; it is hereby ORDERED that the Motion is GRANTED; and it is further Ordered that the Stipulation of Settlement dated as of August 8, 2001 is APPROVED, and the Debtors and the other parties are authorized to take any action necessary to effectuate the terms of the Stipulation of Settlement and execute any documents necessary to implement the Settlement.

**IT IS SO ORDERED.**

  
UNITED STATES DISTRICT JUDGE

DATED: March 18, 2002