

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON

IN RE BEHR DAYTON THERMAL : CASE NO. 3:08-cv-00326-WHR-SLO  
PRODUCTS, LLC :  
 : (Judge Walter H. Rice)  
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**CLASS COUNSEL'S MOTION FOR INCENTIVE PAYMENTS TO THE CLASS  
REPRESENTATIVES**

Pursuant to Federal Rule of Civil Procedure 23 and 54 of the Federal Rules of Civil Procedure and Section VI (5) of the Parties' Settlement Agreement (Doc. 477-2), Class Counsel respectfully move that this court to approve incentive payments to the class representatives from the proceeds of the settlements that have been reached with the Defendants. This Motion is based on the attached Memorandum of Law and exhibits, records, and pleadings herein.

Respectfully submitted,

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**MEMORANDUM OF LAW IN SUPPORT OF**  
**CLASS COUNSEL’S MOTION FOR INCENTIVE PAYMENTS TO**  
**THE CLASS REPRESENTATIVES**

Pursuant to Fed. R. Civ. P. 23(h) and 54(d)(1), the Court’s Order Preliminarily Approving Class Action Settlement Agreement (Doc. 480), and Section VI. of the Parties' Settlement Agreement (Doc. 477-2), Class Counsel respectfully move this Court for an Order approving an incentive payment for each of the four Settlement Class Representatives: Terry Martin, Deborah Needham, Linda Russell, and Nancy Smith, in the amount of \$10,000 each.

Incentive awards are fairly typical in class action cases. See 4 William B. Rubenstein et. al., *Newberg on Class Actions*, §11:38 (4th ed. 2008); Theodore Eisenberg & Geoffrey P. Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study*, 53 U.C.L.A. L. Rev. 1303 (2006). *Thornton v. East Texas Motor Freight*, 497 F.2d 416, 420 (6th Cir. 1974). “These awards vary in amount depending upon the circumstances.” *Brotherton v. Cleveland*, 141 F. Supp. 2d 907, 914 (S.D. Ohio 2001) (awarding \$50,000 to class representative); see also *Enterprise Energy Corp. v. Columbia Gas Transmission Corp.*, 137 F.R.D. 240, 250-51 (S.D. Ohio 1991) (awarding \$ 50,000 to each class representative); *In re Dun & Bradstreet Customer Litigation*, 130 F.R.D. 366, 373-74 (S.D. Ohio 1990) (awarding two class \$ 55,000 each and three class representatives \$ 35,000 each); *In re Smith Kline Beckman Corp. Securities Litigation*, 751 F. Supp. 525 (E.D. Pa. 1990) (awarding \$ 5000 to each class representative). The awards are payments to class representatives

for their service to the class in bringing the lawsuit, including any financial or reputational risks undertaken in bringing the action. *Bredbenner v. Liberty Travel, Inc.*, No. CIV.A. 09-1248 MF, 2011 U.S. Dist. LEXIS 38663 (D.N.J. Apr. 8, 2011); *In re Imprelis Herbicide Mktg., Sales Practices & Products Liab. Litig.*, 296 F.R.D. 351, 371 (E.D. Pa. 2013). In cases where the class receives a monetary settlement, the awards may be paid from the common fund. E.g., *Bredbenner*, 2011 WL 1344745, at \*22. Each Class representative was subjected to invasive written discovery, electronic discovery, document production, and deposition. Each spent considerable time communicating with counsel and other class members, or incurred other out-of-pocket expenses directly related to representation of the Classes. Due to these efforts, Class Counsel collectively recommends an award of \$10,000 for each Terry Martin, Deborah Needham, Linda Russell, and Nancy Smith.

The Sixth Circuit has noted that incentive (also called service) awards are appropriate under appropriate circumstances. *Shane Group, Inc. v. Blue Cross Blue Shield of Michigan*, 825 F.3d 299, 311 (6th Cir. 2016); *Hadix v. Johnson*, 322 F.3d 895, 897 (6th Cir. 2003). In surveying decisions from other courts, the Court of Appeals in *Hadix* explained:

Numerous courts have authorized incentive awards. These courts have stressed that incentive awards are efficacious ways of encouraging members of a class to become class representatives and rewarding individual efforts taken on behalf of the class. Yet applications for incentive awards are scrutinized carefully by courts who sensibly fear that incentive awards may lead named plaintiffs to expect a bounty for bringing suit or to compromise the interest of the class for personal gain. *Hadix v. Johnson*, 322 F.3d at 897 (internal citations omitted).

An award to the Class Representatives is appropriate here. This is not a case where the class representatives compromised the interests of the class for personal gain. The Class Representatives were not promised an incentive award. Moreover, this is not a case where the requested incentive

award will dwarf the amounts that class members will receive through the claims process. This is an award to individuals who have unselfishly served as class representatives.

These incentive awards are not conditioned on the individuals' support for the settlement, and thus, do not cause the interests of the named plaintiffs to diverge from those of unnamed plaintiffs nor undermine the adequacy of the Class representation. Cf. *Radcliffe v. Experian Info. Solutions Inc.*, 715 F.3d 1157 (9th Cir. 2013). The awards are for the purpose of compensating plaintiffs for their service to the Classes in bringing the lawsuit. Further, the incentive payments are not disproportionately large compared to the payments to individual class members. See 2 *McLaughlin on Class Actions* § 6:28 (11th ed.) (It is fair and reasonable to compensate class representatives from the recovery for the efforts they make and financial and reputational risks they incur in obtaining a recovery on behalf of the class; the range is usually \$1,000-\$20,000, though a proposed incentive award that is at or near one percent of the common fund requires exceptional justification). Here, the requested award amounts of \$10,000 to each of the four named Class Representatives constitute .044% of the common fund and are similar to incentive awards in other class actions. See *In re Ins. Brokerage Antitrust Litig.*, 297 F.R.D. at 158 (awarding \$8,000 to each of the eight named plaintiffs); *Bredbenner*, 2011 WL 1344745, at \*22 (awarding \$10,000 to each of the eight named plaintiffs). In light of the Class-wide benefits resulting from this Settlement, the amounts sought to reward the identified named class representatives are appropriate given that each has individually served in this capacity for over ten years.

The Class Representatives devoted a significant amount of time and effort to representing the interests of the Settlement Class members at all times. It worth noting that this litigation has been pending for over fifteen years, and the task of remaining in contact with class counsel and

the class members has been uncharacteristically burdensome in that regard. In addition, class representatives provided services in:

- Assisting counsel in developing an overall understanding the history of their neighborhood;
- Assisting in organizing meetings with neighborhood residents and members of the class to discuss the litigation and update members as to the status of litigation;
- Participating in discovery and making themselves available for depositions
- Reviewing pleadings and keeping apprised of the status of the litigation; and
- Reviewing settlement details and conferring with counsel to determine whether the settlements were in the best interests of the class.

The class representatives in this case were instrumental in bringing this lawsuit forward. They have performed numerous tasks in association with this litigation. Most importantly, they have made themselves available to assist with this litigation over the course of more than fifteen years without any payment or promise thereof.

The first complaint in this matter was filed on August 11, 2008, in Montgomery County Common Pleas Court where it was styled *Terry Martin, et al. vs. Chrysler Motors LLC, et al.*, Case No. 2008-CV-07378. At that time Linda Russel was also one of the original named representative Plaintiffs with Terry Martin. When the three separate cases involving this litigation were formally consolidated, a master amended complaint was filed on January 2, 2012 (Doc. 118) which added Deborah Needham and Nancy Smith as the representatives for the proposed class. These four individuals remained the class representatives for the duration of the case. They have consistently made themselves available to counsel and members of the class who are/were their neighbors. While a lot of things changed in their lives over this period of time, each of them remained committed to helping the other members of their community who had endured the same

groundwater contamination issues they had. An award to these individual class representatives, as outlined in the settlement agreement, is modest compensation for their invaluable assistance and time in bringing a worthwhile result for the entire class, wholly in keeping with the principles recognized by the many courts that have recognized the appropriateness of such compensation. The Court should grant the relief requested.

Respectfully submitted,

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