

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

PHT HOLDING I LLC, and ALICE
CURTIS, on behalf of themselves and all
others similarly situated,

Plaintiffs,

v.

RELIASTAR LIFE INSURANCE
COMPANY,

Defendant.

Civ. No.: 18-cv-2863 DWF/TNL

**DECLARATION OF SETH ARD IN
SUPPORT OF CLASS COUNSEL'S
MOTION FOR ATTORNEYS' FEES,
REIMBURSEMENT OF
LITIGATION EXPENSES, AND
SERVICE AWARDS**

I, Seth Ard, declare as follows:

1. I submit this declaration in support of Class Counsel's Motion for Attorneys' Fees, Reimbursement of Litigation Expenses, and Service Awards.

2. I am a partner at the law firm of Susman Godfrey L.L.P. ("SG" or "Class Counsel"), which is counsel for Plaintiffs and the Court-appointed Class Counsel in this Action. I have personal, first-hand knowledge of the matters set forth herein and, if called to testify as a witness, could and would testify competently thereto.

3. The Court preliminarily approved the settlement in this Action on July 31, 2023. Dkt. 266. The settlement includes a \$39,000,000 cash fund, as well as non-monetary benefits that have been valued by an insurance expert to be worth an additional \$8,757,089. These amounts result in a gross value for the settlement of \$47,757,089. Class Counsel now seeks a fee of 33⅓ percent of this total settlement value, which is **\$15,919,029.67**. There are 36,480 policies in the Class. This number excludes the policies owned by policy

owners who validly opted out of the Class.¹ The Class Policies first went on sale in the 1980s and were sold in 44 states.

4. SG is working on this case on a fully contingent fee basis. SG frequently takes high-stakes, non-class commercial cases on a contingent fee basis (e.g., patent, legal malpractice, antitrust, etc.). In cases where the firm is advancing expenses, like this one, the firm typically negotiates contingent fee arrangements starting at 40% of the gross sum recovered, which increases to 45% of the gross sum recovered for a settlement that occurs after the 60th day preceding a trial, plus reimbursement of expenses. Highly sophisticated parties and institutions routinely agree to these standard market terms. The requested fee of 1/3 of the gross settlement value is a substantially lower percentage than what SG would receive under its standard contingency agreement entered into in a competitive market.

5. Unlike many firms on the class action side, SG represents plaintiffs and defendants. When entering into result-based fee deals, SG strives for a substantial return on its investment in time and expenses to compensate for risks and opportunity costs, including the opportunity to work on flat fee or hourly billing work that provides a steady income stream. As is common in the industry, SG's contingency percentages are traditionally based on the gross amount recovered and provide for the recoupment of any advanced expenses.

6. This litigation extended over five years, several of which were spent conducting discovery. This included not only discovery requests to Defendant ReliaStar

¹ Capitalized terms used and not otherwise defined herein shall have the meanings given to such terms in the Joint Stipulation and Settlement Agreement (Dkt. 259-2).

Lice Insurance Company (“RLIC”), but also to third parties, including a third-party administrator for many of policies at issue, Gibraltar Life Services, Ltd., and a third-party financial auditor for RLIC, Ernst & Young (“EY”).

7. With respect to EY, for example, Class Counsel served a subpoena on EY in March 2020. EY’s counsel responded with over a dozen objections but stated they were willing to meet and confer regarding the subpoena. Class Counsel conferred with EY’s counsel, who eventually agreed to produce documents. To keep the production on track, Class Counsel and EY’s counsel had calls nearly every week for months until EY’s production was complete. These documents ended up being critical to the case, some of which were even cited in Plaintiffs’ briefing on class certification and summary judgment and then cited by the Court in its eventual order on both motions. *See, e.g.*, Dkt. 211 at 19 (citing Dkt. 151-4 at EY-RELI-000052). Class Counsel also deposed a corporate representative for EY on October 14, 2021.

8. The schedule below is a summary reflecting the amount of time spent by the SG attorneys and professional support staff who were involved in this litigation, and the lodestar calculation using 2023 billing rates or equivalent 2023 billing rates for an attorney or paralegal who left the firm prior to 2023. The following schedule was prepared from time records regularly prepared and maintained by SG, which are available at the request of the Court. Time expended in preparing this application for fees and reimbursement of related expenses are excluded from the below and not reflected. Hours worked by summer associates and a few attorneys and staff who provided occasional “spot project” support at various points in the case also have been excluded and are not reflected below.

Attorneys	Current Rate	Hours	Value
Adimora, Brenda (Staff Attorney)	\$400.00	151.50	\$60,600.00
Ard, Seth (Partner)	\$1,200.00	295.80	\$354,960.00
Bridgman, Glenn (Partner/Associate) ²	\$800.00	49.60	\$39,680.00
Fenwick, Samantha (Staff Attorney)	\$400.00	46.50	\$18,600.00
Kaminsky, Alex (Staff Attorney)	\$400.00	90.50	\$36,200.00
Kirkpatrick, Ryan C. (Partner)	\$1,000.00	313.80	\$313,800.00
Nath, Rohit (Partner/Associate) ³	\$800.00	301.90	\$241,520.00
Sargent, Edgar G. (Partner)	\$800.00	18.60	\$14,880.00
Savage, Zachary B. (Partner)	\$800.00	66.50	\$53,200.00
Sklaver, Steven G. (Partner)	\$1,300.00	516.20	\$671,060.00
Weiss, Ryan (Associate)	\$650.00	2,913.60	\$1,893,840.00
Zuniga, Krisina (Associate)	\$725.00	1,701.40	\$1,233,515.00
Paralegals	Current Rate	Hours	Value
Santos, Vanessa	\$350.00	419.20	\$146,720.00
		6,885.10	\$5,078,575.00

9. The total number of hours expended on this litigation by SG attorneys and paralegals through August 31, 2023, is 6,885.10 hours. The total lodestar value of these hours, derived by multiplying each SG professional's hours by his or her current hourly rate, is \$5,078,575.00. SG also retained local counsel to assist on this matter, Merchant & Gould, P.C. ("M&G" or "Local Counsel"). M&G attorneys and paralegals spent 253.28 hours on this matter through August 31, 2023, excluding hours worked by a few attorneys and staff who provided occasional "spot project" support at various points in the case, representing a lodestar of \$155,362.60. Together, the total number of hours expended on this litigation by Class Counsel and Local Counsel through August 31, 2023, is **7,138.38 hours**, representing a total lodestar value of **\$5,233,937.60**.

² Mr. Bridgman spent time on this case as a partner and as an associate; he worked on the case starting in September 2018 and was promoted to partner in January 2022.

³ Mr. Nath spent time on this case as a partner and as an associate; he worked on the case starting in February 2020 and was promoted to partner in January 2023.

10. All time spent litigating this matter was reasonably necessary and appropriate to prosecute this Action, and the results achieved further confirm that the time spent on the case was proportionate to the amount at stake. The hourly rates for SG's attorneys and professional support staff are the firm's standard hourly rates. The hourly rates of Class Counsel's attorneys range from \$400 to \$1,300.

11. In a nationwide survey of AmLaw 50 law firms performed by PwC Product Sales, LLC, and issued in June 2022, the median standard billing rate for equity partners was \$1,374, the 1st quartile standard billing rate was \$1,531, and the 3rd quartile standard billing rate was \$1,248. The same survey stated that the median standard billing rate for associates was \$895, the 1st quartile standard billing rate was \$944, and the 3rd quartile standard billing rate was \$779.

12. Here, four of the SG partners working on this matter have billing rates of \$800—below the median standard billing rate for *associates*. Moreover, all of them bill at rates below the 2022 median standard billing rate for equity partners. And the billing rates of the two associates who have worked on this case are significantly below the 2022 median standard billing rate for associates (\$650 and \$725, as compared to the median rate of \$895).

13. Based on the reported total lodestar of \$5,233,937.60, the requested award of \$15,919,029.67 yields a multiplier of **3.04**. That multiplier will only decrease as SG and M&G invest additional attorney time into preparing to move for final approval, managing Class Member inquiries about the settlement, and administering the Settlement, if the settlement receives final approval from the Court.

14. As categorized and shown in the below schedule, SG advanced a total of \$1,266,698.39 in un-reimbursed expenses in connection with the prosecution of this case. M&G has further advanced \$1,366.80 in expenses, totaling to **\$1,268,065.19**. These expenses were reasonably necessary to the prosecution of this case and are of the type SG normally incurs in litigation. Expert and consultant expenses are by far the largest category below (\$1,054,999.89).

Expense Category	Amount
Deposition Expenses/Witness Fees/Client Charges	\$29,749.30
Document Review Hardware/Hosting	\$96,572.36
Experts/Consultants	\$1,054,999.89
Filing/Service/Court Reporter Fees/Transcripts	\$3,490.91
Mediation Fees and Expenses	\$11,727.50
Photocopies/Reproduction	\$3,225.32
Research Expenses	\$37,034.92
Secretarial Overtime	\$60.00
Telephone/Postage	\$23.48
Travels/Meals/Hotel/Transportation	\$29,814.71
	\$1,266,698.39

15. The amount of expenses incurred by Settlement Administrator JND Legal Administration (“JND”) is \$177,179.45 through August 31, 2023, and JND estimates that its remaining Settlement Administration Expenses will be approximately \$145,000 to \$170,000, including work in connection with benefit distribution and administration completion. Class Counsel seeks continued permission to reimburse the foregoing Settlement Administration Expenses from the Settlement Fund pursuant to Section 1.40 of the Settlement Agreement, and the Court’s Order Preliminarily Approving Class Action Settlement, Dkt. 266 ¶ 5, and such additional expenses as may be incurred by the Settlement Administrator.

16. Class Representatives PHT Holding I LLC (“PHT”) and Alice Curtis have been significantly involved in this Action. Pursuant to an order by the Court following a joint stipulation filed by the parties, Ms. Curtis was added to the case as a named plaintiff on February 24, 2020. *See* Dkts. 82–84. In response to requests for production served by RLIC, Ms. Curtis collected documents, all of which she kept in hard-copy form, scanned them, and provided them to Class Counsel for production to RLIC. On June 4, 2021, Ms. Curtis was deposed. She was 79 years old at the time of her deposition. Ms. Curtis met with Class Counsel several times during the weeks leading up to her deposition to prepare for it, all during the middle of the COVID-19 pandemic. Ms. Curtis had never been deposed before. Since that time, Class Counsel has kept in close contact with Ms. Curtis, updating her and conferring with her about the case, the status of settlement discussions, and the upcoming trial. Ms. Curtis will be turning 82 years old this November. Particularly given her age and her relatively small financial stake in this case, it is my unequivocal opinion that Ms. Curtis went above and beyond in performing her duties as Class Representative and was at all times acting in the best interests of the Class.

17. PHT was substituted in for Advance Trust & Life Escrow Services, LTA (“ATLES”) as a Class Representative on January 24, 2023. *See* Dkt. 254. The reason for the substitution was that ATLES transferred its ownership interest in the policy at issue to PHT. *See* Dkt. 251. Since that time, PHT has been actively involved in the litigation, including leading up to and during the mediation that resulted in the Settlement Agreement (Dkt. 259–2). In determining to support the settlement, PHT consulted with Class Counsel,

and PHT has made clear to Class Counsel that it is willing to do whatever is necessary to facilitate a favorable resolution of this matter for the Class.

18. A settlement notice that was sent to the Class informed them that Class Counsel would move the Court for an award of attorneys' fees up to "33 1/3% of the gross benefits provided to the Class (that is, will not exceed 33 1/3% of \$47,757,089 million, which is \$15,919,029.67)." The notice further stated that Class Counsel would "seek reimbursement for expenses incurred or to be incurred in connection with the Settlement, as well as a Service Award up to \$50,000 for each of the two Plaintiffs for their service as the representative on behalf of the Class, to be paid from the Final Settlement Fund." The notice informed the Class Members that they could object to any term of the Settlement. As of September 21, 2023, no objections have been submitted.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: September 21, 2023

/s/ Seth Ard

Seth Ard