IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DAVID B. BINDER, et al., *Plaintiffs*, v. PPL CORPORATION, et al., *Defendants*.	No. 5:22-cv-133-MRP

PLAINTIFFS' AMENDED MEMORANDUM IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENT

Table of Contents

Table of Authorities

Cases

Statutes

Other Authorities

INTRODUCTION

Plaintiffs, individually and as representatives of a class of participants and beneficiaries of the PPL Employee Savings Plan, PPL Deferred Savings Plan, PPL Employee Stock Ownership Plan, and the LG&E and KU Savings Plan (collectively the "Plans"), brought this action under 29 U.S.C. §§ 1132(a)(2) and (a)(3) against Defendants PPL Corporation, PPL Services Corporation, the Board of Directors of PPL Corporation and PPL Services Corporation, LG&E and KU Energy LLC, and the Employee Benefit Plan Board of PPL Corporation ("Defendants") for breach of fiduciary duty under 29 U.S.C. § 1104(a) related to Defendants' retention of the Plans' target date funds called the Northern Trust Focus Funds ("Focus Funds") and the use of higher-cost share classes for those funds than were otherwise available for the Plans. ECF No. 1. Defendants dispute these allegations and deny liability for any alleged fiduciary breach.

After extensive arm's length negotiations, the parties reached a settlement that provides meaningful monetary relief to Class members. In light of the litigation risks further prosecution of this action would inevitably entail, Plaintiffs respectfully request that this Court: (1) preliminarily approve the proposed settlement attached to Plaintiffs' Unopposed Motion for Preliminary Approval as Exhibit A ("Settlement"); (2) approve the proposed form and method of notice to Class members; and (3) schedule a hearing at which the Court will consider final approval of the Settlement.[1]

BACKGROUND

I. Plaintiffs' claims and procedural history

Plaintiffs filed their complaint on January 12, 2022. ECF No. 1. Plaintiffs assert three counts against Defendants. Plaintiffs allege Defendants: breached their duty of prudence under 29 U.S.C.

[1] If not defined herein, capitalized terms have the definitions in the Settlement, which is incorporated herein by reference.

§ 1104(a)(1)(A) by retaining the Focus Funds (Count I); breached their duty of prudence under 29 U.S.C. § 1104(a)(1)(A) by using higher-cost share classes of the Focus Funds when lower-cost shares were allegedly available to the Plans (Count II); and breached their duty to monitor the actions of other Plan fiduciaries (Count III). ECF No. 1.

On April 5, 2022, Defendants moved to dismiss the complaint. ECF No. 24. The Court ultimately denied Defendants' motion in full on March 12, 2024. ECF No. 80.

While the Defendants' motion to dismiss was pending, the parties proceeded to discovery. The parties negotiated a stipulation on discovery of hard copy documents and electronically stored information (or "ESI") (ECF No. 34) and a protective order (ECF No. 35). The parties engaged in extensive written discovery with over 6,600 documents produced by the parties or third parties. These materials required close and extensive review by Plaintiffs' counsel, which was aided by discussions with consultants and experts retained by Plaintiffs' counsel. Declaration of Troy A. Doles ("Doles Decl."), ¶ 4.

After discovery materials were thoroughly analyzed, the parties proceeded to the deposition phase of discovery. In total, the parties took the depositions of 11 fact witnesses. Doles Decl. ¶ 5. The depositions of Defendants' witnesses lasted hours with the use of numerous exhibits. *Id*. Following fact discovery, the parties disclosed expert written opinions. In total, six expert witnesses were engaged by the parties in this matter. *Id.* ¶ 6.

On April 7, 2023, Plaintiffs moved for class certification. ECF Nos. 54, 54-01. After Plaintiffs filed their motion and supporting documents, on May 5, 2023, the parties subsequently stipulated to certification with a modified definition of the Class. ECF No. 60. On March 13, 2024, the Court granted the parties' stipulation and certified the following Class under Federal Rule of Civil Procedure 23(b)(1):

> All participants in the PPL Employee Savings Plan, PPL Deferred Savings Plan, PPL Employee Stock Ownership Plan, and LG&E and KU Savings Plan from January 12, 2016 through June 30, 2020, who invested in a Northern Trust Focus Fund target date fund through an individual Plan account, and their beneficiaries, excluding Defendants.

ECF No. 82 at 3 (¶ 1). The Court also appointed Schlichter Bogard as Class counsel and Named Plaintiffs David B. Binder, George Knebel, Todd A. Messner, Deborah Shobe, Diana Klotz and William Simmendinger as Class representatives. *Id.* ¶ 2 (citing ECF No. 54).

Following the completion of fact and expert discovery, the parties jointly moved for a temporary stay of all case deadlines until the Court rules on Defendants' pending motion to dismiss, which was granted on September 11, 2023. *See supra* ECF No. 76. Following the ruling, the Court entered a revised scheduling order setting forth the remaining pretrial deadlines, including Defendants' motion to strike Plaintiffs' jury demand, dispositive motions, motions *in limine,* and a trial date of January 21, 2025. ECF No. 90. The final pretrial conference was set for January 8, 2025. *Id.* at 2.

In accordance with the revised scheduling order, on April 22, 2024, Defendants moved to strike Plaintiffs' jury demand. ECF No. 91. The Court later granted Defendants' motion on November 4, 2024. ECF No. 130.

On June 10, 2024, Defendants moved for summary judgment. ECF No. 99. The summary judgment record was extensive, encompassing hundreds of exhibits spanning thousands of pages. *See, e.g.,* ECF Nos. 99–102, 104, 106. The combined Statement of Facts from the parties was over 230 pages with over 340 paragraphs. *See* ECF No. 113. On December 13, 2024, the Court denied Defendants' motion for summary judgment in its entirety. ECF No. 146. And on November 22, 2024, the parties each moved *in limine* to exclude certain evidence at trial (ECF No. 132, 134), which were denied (ECF Nos. 153–154).

While Defendants' motion for summary judgment was pending, the parties began preparing

for trial. To meet the Court's pretrial deadlines, in October 2024, the parties negotiated internal deadlines to exchange their pretrial disclosures, including exhibit lists, witness lists, stipulated facts, and deposition designations. Doles Decl. ¶ 7. These exchanges first began on November 15, 2024. *Id*. They filed their pretrial disclosures with the Court on December 20, 2024, and January 6, 2025, in accordance with the Court's Policies and Procedures and its order regarding trial preparations. *See, e.g.,* ECF Nos. 151–152-2, 155–157.

II. Mediation

On August 30, 2023, the parties participated in a private mediation with a nationally known mediator, Mr. Hunter Hughes. Doles Decl. ¶ 8; *Myers v. Loomis Armored US, LLC*, No. 18-532, 2020 U.S. Dist. LEXIS 62941, at *3 (W.D.N.C. Apr. 8, 2020) (noting Mr. Hughes). In preparation for the mediation, Plaintiffs prepared a detailed mediation statement outlining the strength of their claims. Although the parties negotiated in good faith during the mediation, they were unable to reach an agreement to resolve the case. However, the parties later resumed settlement discussions once summary judgment briefing was completed on August 26, 2024. ECF No. 111.

Over the next several months, the parties engaged in discussions through the assistance of the private mediator. Doles Decl. ¶ 9. Following the final pretrial conference on January 8, 2025, and with the trial date of January 21, 2025, imminently approaching, the parties were ultimately able to reach a settlement in principle on January 14, 2025. *Cf.* ECF No. 160.

III. The terms of the proposed Settlement

A. Monetary benefits to Class members

In exchange for the dismissal of this action and for entry of the judgment as provided for in the Settlement Agreement, Defendants will make available to Class members significant monetary relief. They will deposit $8,200,000 (the "Gross Settlement Amount") in an interest-bearing settlement account (the "Gross Settlement Fund"). Ex. A § 2.26. The Gross Settlement Fund will

be used to pay Class members' recoveries.

B. The Gross Settlement Fund will pay the costs and expenses associated with the Settlement.

Apart from Class members' recoveries, the Gross Settlement Fund will be used to pay administrative expenses to facilitate the Settlement, Plaintiffs' counsel's attorneys' fees and costs, and Class representatives' service awards if approved by the Court.

1. Administrative Expenses

Administrative expenses include those associated with providing notice to Class members. *Id.* § 2.1. They also include costs associated with hiring the Independent Fiduciary to approve the terms of the Settlement and the Settlement Administrator to administer the Settlement. *Id.* §§ 2.27, 2.39. After consideration of the proposed fees and the quality of the services to be provided by these entities, Gallagher was selected as the Independent Fiduciary, and Analytics Consulting LLC was selected as the Settlement Administrator to provide notice to Class members.[2]

2. Service awards

Plaintiffs will seek $20,000 for each of the six named plaintiffs and Class representatives as a service award (or Class Representatives' Compensation as defined in the Settlement). Ex. A § 2.15. This amount is consistent with district court precedent recognizing the value of individuals stepping forward to represent a class, particularly in contested complex litigation like this where the potential benefit to any individual does not outweigh the cost of prosecuting class-wide claims and there are significant risks of no recovery and alienation from their employers and peers. *See, e.g., Sweda v. Univ. of Pa.*, No. 16-4329, 2021 U.S. Dist. LEXIS 239990, at *24 (E.D. Pa. Dec.

[2] The proposed fee for the Settlement Administrator to provide notice to class members and other related services to facilitate the Settlement is estimated based on information presently available to the parties and is subject to change once the number of Class members and those with available e-mail addresses are determined. *See infra* Argument, § IV.

14, 2021) (granting service awards of $25,000, noting that "such awards are typical for a class action of this nature") (citing *Pledger v. Reliance Tr. Co*., No. 15-4444, 2021 U.S. Dist. LEXIS 105868, at *27–28 (N.D. Ga. Mar. 8, 2021) and *Henderson v. Emory Univ*., No. 16-2920-CAP, 2020 U.S. Dist. LEXIS 218676, at *13–14 (N.D. Ga. Nov. 4, 2020)); *Kruger v. Novant Health, Inc*., No. 14-208, 2016 U.S. Dist. LEXIS 193107, at *17–18 (M.D.N.C. Sept. 29, 2016); *Savani v. URS Prof'l Solutions LLC,* 121 F.Supp.3d 564, 576 (D.S.C. 2015).

Service awards are justified here. The Class representatives took on a substantial risk of non-recovery and alienation from their employers or peers, exposed themselves to personal liability if Defendants are awarded their attorneys' fees and costs under 29 U.S.C. § 1132(g), and devoted substantial amounts of their own time to benefit absent Class members. *See, e.g.,* ECF No. 152 at 19 (IV. Relief Sought: Defendants intended to seek attorneys' fees if successful at trial). The total award requested for the Class representatives is only 1.4% of the Gross Settlement Amount.

3. Attorneys' Fees and Costs

"Under the common fund doctrine, 'a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole.'" *Sweda*, 2021 U.S. Dist. LEXIS 239990, at *17 (quoting *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478, 100 S. Ct. 745, 62 L. Ed. 2d 676 (1980)). "A one-third fee is consistent with the market rate in settlements concerning this particularly complex area of law." *Kruger*, 2016 U.S. Dist. LEXIS 193107, at *7−8; *see also Sweda,* 2021 U.S. Dist. LEXIS 239990, at *20 (approving a one-third fee); *Williams v. Aramark Sports, LLC,* No. 10-1044, 2011 U.S. Dist. LEXIS 102173, at *31 (E.D. Pa. Sept. 9, 2011) (same); *Leap v. Yoshida*, No. 14-3650-GEKP, 2015 U.S. Dist. LEXIS 17146, at *15 (E.D. Pa. Feb. 15, 2015) (fee awards in common fund cases generally range from 19% to 45% of the settlement fund). In addition, "[a]ttorneys who create a common fund for the benefit of a class are entitled to reimbursement of reasonable litigation expenses from the

fund." *Sweda,* 2021 U.S. Dist. LEXIS 239990, at *20 (quoting *In re Aetna Inc.*, No. MDL-1219, 2001 U.S. Dist. LEXIS 68-JRP, at *41 (E.D. Pa. Jan. 4, 2001)).

Plaintiffs' counsel will request attorneys' fees to be paid out of the Gross Settlement Fund in an amount not to exceed one-third of the Gross Settlement Amount, or $2,733,333.33. They will also seek reimbursement for reasonable litigation expenses incurred in an amount not to exceed $600,000.[3] However, Plaintiffs' counsel will not seek fees or costs: that may be incurred to enforce the Settlement, if necessary; from the interest earned on the Gross Settlement Amount; or for the time associated with communicating with Class members, the Independent Fiduciary, the Settlement Administrator or Defendants' counsel to facilitate the Settlement.

ARGUMENT

At the preliminary approval stage, the Court is only required to determine whether "there are no obvious deficiencies and the settlement falls within the range of reason." *Gates v. Rohm & Haas Co.*, 248 F.R.D. 434, 438 (E.D. Pa. 2008) (citation omitted). This determination requires the Court to consider whether: "(1) the negotiations occurred at arm's length; (2) there was sufficient discovery; (3) the proponents of the settlement are experienced in similar litigation; and (4) only a small fraction of the class objected." *Id.* at 439 (quoting *In re Linerboard Antitrust Litig.*, 292 F. Supp. 2d 631, 638 (E.D. Pa. 2003)); *Harlan v. Transworld Systems, Inc.*, 302 F.R.D. 319, 324 (E.D. Pa. Sept. 9, 2014) (same); *see also In re Cendant Corp. Litig.*, 264 F.3d 201, 233 n.18 (3d Cir. 2001). "If, after consideration of those factors, a court concludes that the settlement should be preliminarily approved, 'an initial presumption of fairness' is established." *Gates,* 248 F.R.D. at

[3] Plaintiffs' counsel will submit a formal application for attorneys' fees and costs and for the Class representatives' service awards at least 30 days prior to the deadline for Class members to file objections to the Settlement.

439 (quoting *In re Linerboard*, 292 F. Supp. 2d at 638).[4]

For the reasons detailed below, the four factors in assessing the preliminary approval of this Settlement are met.

I. The Settlement is the product of arm's length negotiations.

There is a strong initial presumption that a proposed class action settlement is fair and reasonable when it is the result of arm's-length negotiations. *See* Herbert B. Newbert & Alba Conte, 1 *Newberg on Class Actions* § 11.41, at 11–88 (3d ed. 1992); *In re General Motors Corp. Pick-Up Truck Fuel Tank Products Liability Litig.*, 55 F.3d 768, 785 (3d Cir. 1995). As described above, this Settlement is the result of lengthy and complex arm's-length negotiations between the parties. *See* Doles Decl. ¶ 10. Notably, the Settlement was only reached after the parties first participated in a private mediation and then engaged in protracted discussions over several months to reach a final agreement. *Id*. ¶¶ 8–9. With the assistance of a private mediator, these discussions were led by experienced counsel for both parties who have settled numerous similar cases and are extremely experienced in negotiating complex settlements. *See Yoshida,* 2015 U.S. Dist. LEXIS 17146 at *19 (observing that class counsel are "experienced in prosecuting class actions" and their "recommendation accords with this Court's judgment").

II. The Settlement was reached after years of litigation on the eve of trial.

At the time the Settlement was reached, the parties had nearly completed prosecuting this action to judgment over three years. Prior to the commencement of this action, Plaintiffs' counsel conducted an extensive investigation of their factual and legal theories regarding the administration of the Plans and the management of the Focus Funds, among other prominent

[4] Following preliminary approval, the Court will then hold a final fairness hearing at a later date, during which time class members—who received notice of the proposed settlement—may object, and the Court will consider additional factors in deciding whether to grant final approval of the Settlement. *In re Prudential Ins. Co. Am. Sales Practice Litig.*, 148 F.3d 283, 317 (3d Cir. 1998); *Harlan*, 302 F.R.D. at 324.

issues. This investigation was critical to support Plaintiffs' plausible allegations set forth in the Complaint. *See, e.g.,* ECF No. 1 ¶¶ 10–25, 31–49, 81–130; ECF No. 80 (denying motion to dismiss).

Through fact and expert discovery, Plaintiffs' counsel further developed their claims and theories. Plaintiffs' counsel obtained significant discovery from Defendants and third parties that consisted of over 6,000 documents. To adequately prepare for the depositions of Defendants' current or former employees, Plaintiffs diligently examined and organized these materials for use in the case. And contemporaneous with the taking of fact witness depositions, Plaintiffs' counsel consulted with their experts in various fields to aid in the development of their claims, and then to ultimately prepare their experts' reports that were subsequently disclosed. The intense factual development of Plaintiffs' claims is amply shown through the summary judgment record, which led to the Court's denial of Defendants' motion for summary judgment. *See, e.g.,* ECF Nos. 104, 104-1; *see* ECF No. 106 (sealed); ECF No. 146 (order).

When the parties reached a settlement in principle on January 14, 2025, the parties were prepared for trial commencing on January 21, 2025. They had completed all pretrial filings and were in final preparations. There is no question that the parties conducted sufficient discovery in support of their claims and defenses.

III. Plaintiffs' counsel has extensive experience in ERISA class action litigation.

Plaintiffs' counsel is not only highly experienced in handing ERISA class actions involving ERISA-governed plans, but "pioneer[ed]…the field of retirement plan litigation." *Abbott v. Lockheed Martin Corp.,* No. 06-701, 2015 U.S. Dist. LEXIS 93206, at *4–5 (S.D. Ill. July 17, 2015); *Nolte v. Cigna Corp.,* No. 07-2046, 2013 U.S. Dist. LEXIS 184622, at *8 (C.D. Ill. Oct. 15, 2013) (Schlichter Bogard is the "preeminent firm" having "achieved unparalleled results on behalf of its clients"). They have been recognized for their "considerable skill and ability" in

ERISA matters. *Sims v. BB&T Corp*., No. 15-732, 2019 U.S. Dist. LEXIS 75839, at *13 (M.D.N.C. May 6, 2019) (collecting cases). They are regarded as experts in their field. *See Tussey v. ABB, Inc*., No. 06-4305, 2012 U.S. Dist. LEXIS 157428, at *10 (W.D. Mo. Nov. 2, 2012) (Schlichter Bogard are "clearly experts in ERISA litigation"); *Krueger v. Ameriprise Fin., Inc*., No. 11-2781, 2015 U.S. Dist. LEXIS 91385, at *6 (D. Minn. July 13, 2015) ("experts in ERISA litigation"). The firm also obtained the only two victories of an ERISA fiduciary breach case in the Supreme Court. *Tibble v. Edison Int'l*, 575 U.S. 523 (2015); *Hughes v. Northwestern Univ.,* 142 S. Ct. 737 (2022). They also have another ERISA case currently pending before the Supreme Court. *Cunningham v. Cornell Univ.,* No. 23-1007 (argued January 22, 2025).

Accordingly, Plaintiffs' counsel has extensive experience in similar litigation to protect the interests of Class members. *See also* ECF No. 54-2 ¶ 9 (listing 39 cases wherein Plaintiffs' counsel has been appointed as class counsel).

IV. No objections to preliminary approval have been lodged.

At this preliminary stage, no objections to the Settlement have been lodged by any Class member.

Following preliminary approval, the parties will engage in a robust notice program that satisfies all due process considerations and meet the requirements of Rule 23(e)(1). Due process and Rule 23(e) do not require that each Class member receive notice but do require that the class notice be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Central Hanover Bank and Trust Co.*, 339 U.S. 306, 314 (1950). "Individual notice must be provided to those class members who are identifiable through reasonable effort." *Eisen v. Carlisle and Jacquelin*, 417 U.S. 156, 172 (1974).

The parties' proposed forms of notice are attached as Exhibits 3 and 4 to the Settlement. The proposed notices will fully apprise Class members of the existence of the lawsuit, the proposed Settlement, and the information they need to make informed decisions about their rights, including: (i) the terms and operation of the Settlement; (ii) the nature and extent of the release; (iii) the maximum attorneys' fees and costs that will be sought; (iv) the procedure and timing for objecting to the Settlement and the right of the parties to seek limited discovery from objectors; (v) the date and place of the final fairness hearing; and (vi) the website on which the full settlement documents, and any modifications to those documents, will be posted.

The notice plan consists of multiple components designed to reach Class members as set forth in Section 3.4 of the Settlement. After entry of the preliminary approval order, notice will be sent by electronic means or first-class mail to the current or last known address of all Class members. The notice plan includes a follow-up requirement for the Settlement Administrator to take additional action to reach those Class Members whose notice letters are returned as undeliverable. In addition to the notice, the Settlement Administrator will develop a dedicated website solely for the Settlement.

Based on the foregoing, the form of notice and proposed procedures for notice satisfy the requirements of due process, and the Court should approve the notice plan as adequate. *See* Alba Conte & Herbert Newberg, *Newberg on Class Actions* § 8:32 (4th ed. 2002)) (notice is sufficient when it "inform[s] the class members of the nature of the pending action, the general terms of the settlement, that complete and detailed information is available from court files, and that any class member may appear and be heard at the hearing").

CONCLUSION

Plaintiffs respectfully request that the Court grant preliminary approval of the Settlement.

March 7, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on March 7, 2025.

/s/ Troy A. Doles