

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

IN RE CITIGROUP INC. BOND
LITIGATION

Master File No. 08 Civ. 9522 (SHS)

**MEMORANDUM IN SUPPORT OF BOND PLAINTIFFS'
MOTION FOR APPROVAL OF DISTRIBUTION PLAN AND BOND COUNSEL'S
REQUEST FOR APPROVAL OF PAYMENT OF LITIGATION EXPENSE**

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Bond Plaintiffs Louisiana Sheriffs' Pension and Relief Fund, Arkansas Teacher Retirement System, City of Tallahassee Retirement System, City of Philadelphia Board of Pensions and Retirement, Miami Beach Employees' Retirement Plan, Southeastern Pennsylvania Transportation Authority, American European Insurance Company, Phillip G. Ruffin and James M. Brown, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, respectfully submit this memorandum in support of their motion for entry of the proposed order which would approve the Distribution Plan for the proceeds of the Settlement (the "Distribution Order") in the above-captioned action (the "Action"), as set forth in the accompanying Declaration of Stephen J. Cirami in Support of Bond Plaintiffs' Motion for Approval of Distribution Plan (the "Cirami Declaration" or "Cirami Decl."), submitted on behalf of the Court-appointed Claims Administrator, The Garden City Group, Inc. ("GCG").¹

If entered by the Court, the Distribution Order will, among other things, (i) approve GCG's administrative recommendations accepting and rejecting Proofs of Claim submitted herein; (ii) direct the distribution of the Net Settlement Fund to Bond Class Members whose Proofs of Claim have been accepted as valid and approved by the Court; and (iii) approve GCG's fees and expenses incurred and to be incurred in connection with the administration of the Settlement. Additionally, as set forth in the accompanying Declaration of Rochelle Feder Hansen in Support of Request for Approval of Payment of Litigation Expense (the "Hansen Dec."), Bond Counsel respectfully seeks the Court's approval to pay from the Settlement Fund an expert's invoice in the amount of \$129,855, a Litigation Expense that inadvertently was not included in Bond Counsel's original application for an award of attorneys' fees and Litigation Expenses.

¹ Unless otherwise indicated herein, all terms with initial capitalization shall have the meanings ascribed to them in the Cirami Declaration or in the Stipulation and Agreement of Settlement dated March 18, 2013 (ECF No. 153-1) (the "Stipulation").

I. BACKGROUND

The Court has approved the Stipulation entered into by Bond Plaintiffs and the Defendants. The Stipulation sets forth the terms of the settlement (the “Settlement”) which represents a complete resolution of this Action. Pursuant to the terms of the Settlement, \$730 million was deposited in escrow for the benefit of the Bond Class.

In accordance with the Preliminary Approval Order (ECF No. 155), GCG, the Court-approved Claims Administrator, has mailed the Notice of (I) Pendency of Class Action and Proposed Settlement; (II) Settlement Fairness Hearing; and (III) Motion for an Award of Attorneys’ Fees and Reimbursement of Litigation Expenses (the “Notice”) and the Proof of Claim and Release form (the “Proof of Claim” and, together with the Notice, the “Notice Packet”) to potential Bond Class Members and to brokers and other nominees. As set forth in the accompanying Cirami Declaration, GCG has mailed approximately 504,100 Notice Packets to potential Bond Class Members and nominees. Cirami Decl. ¶ 3. The Notice informed Bond Class Members that if they wished to be eligible to participate in the distribution of the Net Settlement Fund, they were required to submit Proofs of Claim by mail, postmarked no later than August 21, 2013.

The Court granted final approval to the Settlement and the Effective Date has occurred. Accordingly, the Net Settlement Fund may be distributed to Authorized Claimants. Pursuant to the Stipulation,² Bond Plaintiffs respectfully ask the Court to enter the Distribution Order approving the Distribution Plan.

² See Stipulation at ¶¶ 28, 33.

II. CLAIMS ADMINISTRATION

As detailed in the accompanying Cirami Declaration, through July 15, 2014, GCG received 114,765 Proofs of Claim. Cirami Decl. ¶ 6. GCG has completed processing 114,467 of the Claims submitted through that date.³ *Id.* ¶ 43.

Many of the Proofs of Claim initially submitted were incomplete, not signed, not properly documented, or were otherwise deficient. Cirami Decl. ¶ 22. To the extent that a Proof of Claim was wholly deficient (for example, if the Proof of Claim was missing documentation for the entire Proof of Claim, if the Claimant did not sign the Proof of Claim or did not provide enough information to calculate the Claim, or if the Proof of Claim was determined to have no Recognized Claim when calculated under the Court-approved Plan of Allocation), GCG sent a rejection letter to the Claimant describing the defect(s) with his, her or its Proof of Claim and stating what, if anything, was necessary to cure the Proof of Claim. *Id.* ¶ 23. GCG also mailed letters to each Claimant whose Proof of Claim was determined to be partially deficient (for example, if the Claimant was missing documentation for some transactions, or did not supply some transactional information), advising the Claimant of the defect(s) in the Proof of Claim and stating what was necessary to cure such defect(s). *Id.* ¶ 24. Copies of sample rejection letters are attached as Exhibit A to the Cirami Declaration. Cirami Decl. ¶ 25 and Exhibit A thereto.

GCG carefully reviewed Claimants' responses to the rejection letters and worked with Claimants to resolve deficiencies where possible. Cirami Decl. ¶¶ 26-31. After responses to the rejection letters were received and processed, GCG called Claimants with still-deficient Proofs of Claim with potential payments of approximately \$10,000 or greater to assist them in curing the

³ As discussed below and in the accompanying Cirami Declaration, there are 274 Claims-in-Process for which the processing has not yet been completed and 24 disputed Claims with outstanding requests for judicial review.

deficiencies (*id.* ¶¶ 27-29), and coordinated an automated calling campaign to those Claimants with potential payments of less than approximately \$10,000 (*id.* ¶ 30).

Consistent with the terms of the Stipulation (¶ 28(e)), all rejection letters specifically advised the Claimant that he, she or it had the right, within twenty (20) days after the mailing of the rejection letter, to contest the rejection of the Claim and request Court review of the disposition of the Claim. Cirami Decl. ¶¶ 25, 32 and Exhibit A thereto.

GCG received letters from 247 Claimants contesting the administrative rejection of their Claims in whole or in part. Cirami Decl. ¶ 32. A significant number of those Claimants simultaneously provided GCG with adequate documentation or information to complete their Proof of Claim and cure any remaining deficiencies, and those Claims are now being recommended for acceptance. *Id.* A number of other Claimants affirmatively withdrew their requests for Court review, or were able to cure the deficiencies in their Claims, after GCG contacted them and explained the basis for its administrative determination. Cirami Decl. ¶¶ 32-33. As a result, there are currently 24 Claims with outstanding requests for judicial review. *Id.* ¶ 33. GCG's communications with certain of these Claimants are still ongoing and these further communications may result in the mooted or withdrawal of some of the disputed Claims. So as not to delay the distribution to Claimants whose Claims have been fully processed and are being recommended for acceptance, Bond Counsel and GCG recommend that consideration of these disputed Claims be deferred until after the Initial Distribution.

As set forth in the Cirami Declaration, of the 114,467 Claims received and fully processed through July 15, 2014,⁴ GCG has determined that 64,783 are acceptable in whole or in part, and that

⁴ The 114,467 Proofs of Claims that are designated "fully processed" as of July 15, 2014 do not include the 274 Claims-in-Process or the 24 disputed Claims. Cirami Decl. ¶ 43 n.5.

49,684 should be wholly rejected because they are ineligible for payment from the Net Settlement Fund. Cirami Decl. ¶ 43.

The 114,467 Proofs of Claim that were fully processed through July 15, 2014 include 1,580 Proofs of Claim that were postmarked or received after the Court-approved Claim filing deadline of August 21, 2013, of which 687 are, but for the late submission, otherwise eligible. Cirami Decl. ¶ 36. While these 687 Claims were late, they were received while the processing of timely Claims was ongoing, and due to the amount of time needed to process the timely Claims received, the processing of these late Claims did not delay the completion of the claims administration process or the distribution of the Net Settlement Fund. *Id.* The Court has discretion to accept Claims submitted after the filing deadline.⁵ It is respectfully submitted that, when the equities are balanced, it would be unfair to prevent an otherwise eligible Claim from participating in the Net Settlement Fund solely because it was submitted after the Court-approved Claim filing deadline, when it was submitted while timely Claims were still being processed.

Bond Plaintiffs request that the Court approve GCG's administrative determinations accepting and rejecting Claims as set forth in the Cirami Declaration.

III. CLAIMS-IN-PROCESS

As described above, GCG spent a significant amount of time working with Claimants to complete their Claims. GCG has completed the processing of all Claims received except for those received on or after July 1, 2014 and those earlier received claims that require additional information

⁵ See Notice ¶ 43 (“*Unless the Court otherwise orders, any Bond Class Member who fails to submit a Claim Form postmarked on or before August 21, 2013 shall be fully and forever barred from receiving payments pursuant to the Settlement . . .*”) (emphasis added); *see also* Preliminary Approval Order at ¶ 10 (“*Unless the Court orders otherwise, all Proof of Claim Forms must be postmarked no later than one hundred and twenty (120) calendar days after the Notice Date. Bond Counsel may, at its discretion, accept for processing late Claims provided such acceptance does not delay the distribution of the Net Settlement Fund to the Bond Class*”).

where GCG is still actively working with the parties to resolve their Claims. Cirami Decl. ¶ 34. GCG has not completed processing 274 Claims, referred to as the “Claims-in-Process.” Because these 274 Claims-in-Process will take additional time to complete, Bond Counsel and GCG recommend that consideration of the Claims-in-Process be deferred until after the Initial Distribution so as not to delay distribution to the over 64,000 Authorized Claimants whose Claims have been fully processed and are recommended for approval.

To the extent that any of the Claims-in Process or disputed Claims are ultimately determined to be eligible to participate in the Settlement, those Claims will be paid from the reserve that is proposed to be established as part of the Distribution Plan in what is referred to as the “Claims-in-Process Distribution.” Pursuant to the proposed Distribution Plan, when GCG has completed the processing of the Claims-in-Process, Bond Plaintiffs will move the Court for approval of GCG’s determinations with respect to those Claims. Under the proposed Distribution Plan, payments to any approved Claims-in-Process or disputed Claims will bring those Claimants into a state of parity with the Claimants who will be paid in the proposed Initial Distribution.

In order to facilitate the efficient distribution of the Net Settlement Fund, however, there must be a final cut-off after which no other Proofs of Claim may be accepted. Accordingly, Bond Plaintiffs respectfully request that the Court order that any new Claims and any adjustments to previously filed Claims that would result in an increased Recognized Claim amount that are postmarked or received through and including five (5) business days after entry of an order approving a distribution plan for the Net Settlement Fund (the “Claims-in-Process Cut-off Date”) shall be treated as Claims-in-Process; and any new Claims and any adjustments to previously filed Claims that would result in an increased Recognized Claim amount that are postmarked or received

after that date shall be barred⁶ subject to the provision of ¶ 47(f) of the Cirami Declaration which provides that, if Proofs of Claim are received or modified after the Claims-in-Process Cut-off Date that would have been eligible for payment or additional payment under the Court-approved Plan of Allocation if timely received then, at the time that Bond Counsel, in consultation with GCG, determines that a redistribution is not cost effective as provided in subparagraph 47(e)(2) of the proposed Distribution Plan, such Claimants, at the discretion of Bond Counsel, may be paid their Distribution Amounts or additional Distribution Amounts on a *pro rata* basis that would bring them into parity with other Authorized Claimants who have cashed all their prior distribution checks to the extent possible.

IV. FEES AND EXPENSES OF CLAIMS ADMINISTRATOR

In accordance with GCG's agreement with Bond Counsel to act as the Claims Administrator for the Settlement, GCG was responsible for, among other things, mailing and publishing notice to the Settlement Class, creating and maintaining a settlement website and toll-free telephone helpline, processing the Proofs of Claim, and allocating and distributing the Net Settlement Fund to Authorized Claimants. As set forth in the Cirami Declaration, GCG's fees and expenses for its work performed and estimated to be performed on behalf of the Bond Class in connection with the Initial Distribution of the Net Settlement Fund total \$2,895,109.42. Cirami Decl. ¶ 46. To date, GCG has received payments totaling \$1,920,773.59.⁷ Accordingly, there is an outstanding balance due to

⁶ Should an adjustment be received that results in a lower Recognized Claim amount, that adjustment will be made and the Recognized Claim amount will be reduced accordingly prior to a distribution to that Claimant.

⁷ Under the terms of the Stipulation, Bond Counsel were authorized to pay the costs and expenses incurred in identifying and notifying Bond Class Members and administering the Settlement of up to \$5,000,000 without further order of the Court. *See* Stipulation ¶ 18; *see also* Preliminary Approval Order ¶ 21 (“All reasonable costs incurred in notifying Bond Class Members of the Settlement as well as in administering the Settlement shall be paid as set forth in the Stipulation except that any such costs in excess of \$5 million shall be paid only upon further order of the Court.”).

GCG of \$974,335.83. *Id.* Bond Plaintiffs respectfully request that the Court approve all of GCG's fees and expenses.

IV. REQUEST FOR APPROVAL OF PAYMENT OF LITIGATION EXPENSE

Bond Counsel respectfully requests that the Court approve payment from the Settlement Fund of an incurred Litigation Expense that inadvertently was not included in Bond Counsel's June 10, 2013 application for fees and expenses (ECF Nos. 158-160), specifically an invoice in the amount of \$129,855 that had been submitted by one of Bond Plaintiffs' experts, Harris Devor, CPA. *See Hansen Dec.* ¶ 2.

As set forth in the Declaration of Steven B. Singer in Support of: Bond Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Allocation, and (II) Bond Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses dated June 7, 2013 ("Singer Decl.") (ECF No. 160), previously filed with the Court, Mr. Devor was Bond Plaintiffs' expert as to the adequacy of Citigroup's loan loss reserves, and GAAP compliance. Singer Decl. ¶ 94. Mr. Devor, and those working under his supervision, analyzed thousands of pages of documents concerning the composition and default rates of Citigroup's \$200 billion mortgage portfolio throughout the two-and-a-half year Offerings Period, Citigroup's financial models for calculating its reserves, and KPMG's workpapers. Based on this information, Mr. Devor analyzed how Citigroup erred in calculating its reserves, and what Citigroup's loan loss reserves should have been at each reporting period during the Offerings Period. *Id.* ¶ 98.

Bond Counsel submits that the unpaid amount incurred for Mr. Devor's services was a reasonable and necessary expenditure that was appropriately incurred in the prosecution of the Action. We note that allowance of this outstanding expense, in addition to the \$7,326,814 in Litigation Expenses originally awarded by the Court, would result in a total award of \$7,456,669 in Litigation Expenses, which is still substantially less than the \$10,500,000 maximum amount of

Litigation Expenses that Bond Counsel indicated that it would seek in the Notice disseminated to the Bond Class (*see* Notice ¶¶ 5, 69 (ECF No. 160-1 at pp. 10, 19)) and no objections were submitted with respect to the expense application. Accordingly, Bond Counsel respectfully requests that the Court approve payment of \$129,855 from the Settlement Fund for this unpaid expense.

V. DISTRIBUTION PLAN OF THE NET SETTLEMENT FUND

As set forth in detail in the Cirami Declaration, GCG has completed the processing of all Proofs of Claim received through July 15, 2014, except for the processing of the Claims-in-Process and the disputed Claims. Bond Plaintiffs, on notice to Defendants' Counsel, now respectfully move the Court for an order approving GCG's determinations concerning the acceptance and rejection of the Claims that are included in this motion and approving the proposed plan for distribution of the Net Settlement Fund as set forth in the Cirami Declaration (the "Distribution Plan").⁸

Initial Distribution of Net Settlement Fund

Pursuant to the proposed Distribution Plan, GCG will conduct an initial distribution (the "Initial Distribution") of the Net Settlement Fund, after deducting the payments previously allowed and the amounts approved by the Court on this motion, and after deducting payment of any estimated taxes, the costs of preparing appropriate tax returns, and any escrow fees. In the Initial Distribution, GCG will determine a Distribution Amount for each Authorized Claimant which shall be the Authorized Claimant's *pro rata* share of the Net Settlement Fund based on the Claimant's Recognized Claim in comparison to the total Recognized Claims of all Authorized Claimants. *See* Cirami Decl. ¶ 47(b)(1). Pursuant to the Court-approved Plan of Allocation, GCG will eliminate from the distribution any Authorized Claimant whose Distribution Amount calculates to less than

⁸ Under the terms of the Stipulation, the Defendants have no role in or responsibility for the administration of the Settlement Fund or processing of Claims, including determinations as to the validity of Claims or the distribution of the Net Settlement Fund. *See* Stipulation ¶¶ 17, 23, and 27.

\$20.00, and then re-calculate the Distribution Amounts for Authorized Claimants who are entitled to receive \$20.00 or more. *Id.* ¶¶ 47(b)(2) and (b)(3). In connection with the Initial Distribution, Authorized Claimants whose re-calculated Distribution Amount is less than \$100 will receive their full Distribution Amount in the Initial Distribution (“Claims Paid in Full”). *Id.* ¶ 47(b)(4). Authorized Claimants whose re-calculated Distribution Amount is \$100 or more shall be paid 90% of their Distribution Amounts, with the remaining 10% held in reserve (the “Reserve”) to address any contingencies that may arise, including the payment of any Claims-in-Process and/or disputed Claims that ultimately may be determined to be eligible to participate in the Settlement. *Id.* ¶ 47(b)(5).

In order to encourage Authorized Claimants to cash their checks promptly, and to avoid or reduce future expenses relating to uncashed checks, Bond Plaintiffs propose that the Initial Distribution and Claims-in-Process Distribution checks bear the notation, “CASH PROMPTLY. VOID AND SUBJECT TO RE-DISTRIBUTION IF NOT CASHED BY [DATE 120 DAYS AFTER ISSUE DATE].” In an effort to have as many Authorized Claimants as possible cash their checks, GCG will perform extensive follow up with Authorized Claimants who initially fail to cash their checks. Cirami Decl. ¶ 47(b)(6) n.7. Authorized Claimants who do not cash their checks within the time allotted or on the conditions set forth in paragraph 47(b)(6) footnote 7 of the Cirami Declaration will irrevocably forfeit all recovery from the Settlement, and the funds allocated to all such stale-dated checks will be available to be redistributed to other Authorized Claimants in the “Second Distribution” described below. *Id.* ¶ 47(b)(7).

Resolution of Claims-in-Process and Disputed Claims

When GCG has completed the processing of the Claims-in-Process, Bond Plaintiffs will move the Court for approval of GCG’s determinations with respect to those Claims and the disputed

Claims; and upon entry of an order approving Claims-in-Process and/or disputed Claims for payment (if any), GCG will make a distribution to any Claimants whose Claims-in-Process or disputed Claims are accepted for payment that will bring them into parity with the Claimants approved for payment pursuant to Bond Plaintiffs' instant motion (the "Claims-in-Process Distribution"). *See* Cirami Decl. ¶ 47(c).

Second/Additional Distribution(s) of Net Settlement Fund

After GCG has made reasonable and diligent efforts to have Authorized Claimants cash their Initial Distribution checks and Claims-in-Process Distribution checks, but no earlier than nine (9) months after the Claims-in-Process Distribution, GCG will conduct a second distribution (the "Second Distribution") of the Net Settlement Fund, pursuant to which any amounts remaining in the Net Settlement Fund after the Initial Distribution and the Claims-in-Process Distribution (including the Reserve and the funds for all void stale-dated checks), after deducting GCG's costs and expenses incurred in connection with administering the Settlement for which it has not yet been paid (including the estimated costs of such Second Distribution), and after deducting payment of any estimated taxes, the costs of preparing appropriate tax returns, and any escrow fees, will be distributed to all Authorized Claimants from the Initial Distribution and Claims-in-Process Distribution who (1) were not Claims Paid in Full; (2) cashed their Initial Distribution check or Claims-in-Process Distribution check; and (3) would receive at least \$20.00 from such distribution. Cirami Decl. ¶ 47(d). If cost effective, subsequent distributions of the funds remaining in the Net Settlement Fund will take place in six-month intervals thereafter. *Id.* ¶ 47(e)(1). At such time as Bond Counsel, in consultation with GCG, determines that further redistribution is not cost-effective, the balance of the Net Settlement Fund, after payment of any unpaid costs or fees and taxes and any payment of otherwise valid Claims received or adjusted after the Claims-in-Process Cut-off Date,

shall be contributed to non-sectarian, not-for-profit 501(c)(3) organization(s) recommended by Bond Counsel and approved by the Court. *Id.* ¶¶ 47(e)(2) and (f).

VI. RELEASE OF CLAIMS

In order to allow the full and final distribution of the Net Settlement Fund, it is necessary to bar any further claims against the Net Settlement Fund beyond the amounts allocated to Authorized Claimants, and to provide that all persons involved in the review, verification, calculation, tabulation, or any other aspect of the processing of the Proofs of Claim submitted herein, or otherwise involved in the administration or taxation of the Settlement Fund or the Net Settlement Fund, be released and discharged from any and all claims arising out of such involvement. Accordingly, Bond Plaintiffs respectfully request that the Court release and discharge all persons involved in the review, verification, calculation, tabulation, or any other aspect of the processing of the Claims submitted herein, or otherwise involved in the administration or taxation of the Settlement Fund or the Net Settlement Fund from any and all claims arising out of such involvement, and bar all Bond Class Members, whether or not they receive payment from the Net Settlement Fund, from making any further claims against the Net Settlement Fund, Bond Plaintiffs, Bond Plaintiffs' Counsel, the Claims Administrator, the Escrow Agent or any other agent retained by Bond Plaintiffs or Bond Counsel in connection with the administration or taxation of the Settlement Fund or the Net Settlement Fund beyond the amounts allocated to Authorized Claimants.

VII. CONCLUSION

For the foregoing reasons, it is respectfully submitted that Bond Plaintiffs' Motion for Approval of Distribution Plan and Bond counsel's request for approval of payment from the Settlement Fund of expert's outstanding invoice should be approved, and the proposed Order Approving Distribution Plan and Payment of Litigation Expense should be entered.

Dated: July 18, 2014

Respectfully submitted,

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