IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

IN RE MUTUAL FUNDS INVESTMENT LITIGATION	)	MDL No. 1586
	)	Case No. 04-MD-15862-04
This Document Relates To: *Pilgrim Baxter Sub-Track*, 04-md-15862-04	)	(Hon. J. Frederick Motz)

PLAINTIFFS' AND PLAINTIFFS' COUNSEL'S SUPPLEMENTAL MEMORANDUM OF LAW IN FURTHER SUPPORT OF FINAL APPROVAL OF PROPOSED SETTLEMENTS, PLAN OF ALLOCATION OF SETTLEMENT PROCEEDS, AND APPLICATION FOR ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES IN THE PILGRIM BAXTER SUB-TRACK

Dated: October 6, 2010

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Plaintiffs and Plaintiffs' Counsel respectfully submit this Supplemental Memorandum of Law and the supplemental declaration of Class Lead Counsel (the "BLB&G Supplemental Declaration" or "BLB&G Supplemental Decl."), submitted herewith, in further support of their motions (i) for final approval of the proposed Settlements and the Plan of Allocation in the Pilgrim Baxter sub-track; and (ii) for an award of attorneys' fees and reimbursement of litigation expenses in the Pilgrim Baxter sub-track. The Court is also respectfully referred to the opening papers filed with the Court in support of these motions on September 14, 2010.[1]

I. THE COURT SHOULD APPROVE THE SETTLEMENTS, PLAN OF ALLOCATION, AND REQUESTED AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES

As set forth in detail in the materials submitted in support of Plaintiffs' and Plaintiffs' Counsel's motions on September 14, 2010, the proposed Settlements before the Court represent the favorable resolution of the class and derivative claims asserted in this multi-district litigation concerning the PBHG mutual funds. These actions began in late 2003, and after many years of hard-fought litigation against six separate groups of defendants – each represented by separate, highly skilled and experienced counsel – Plaintiffs and their counsel have achieved valuable Settlements that will conclude all of the litigation and which have resulted, among other benefits, in the creation of a settlement fund in excess of $31.5 million. In sum, as set forth in detail in Plaintiffs' opening papers, the proposed Settlements were achieved through significant effort and

[1] In the interest of efficiency, this memorandum supports both Plaintiffs' motion for approval of the proposed Settlements and Plan of Allocation and accompanying submissions (Dkt. No. 1343) and Plaintiffs' Counsel's motion for an award of attorneys' fees and accompanying submissions (Dkt. No.1344). All capitalized terms not otherwise defined herein shall have the meanings set forth in the Preliminary Order for Notice and Hearing in Connection with Settlement Proceedings in the Pilgrim Baxter Sub-Track dated May 19, 2010 (Dkt. No. 1286) (the "Preliminary Approval Order") and in the Declaration of Chad Johnson, William C. Fredericks and Jerald Bien-Willner in Support of Final Approval of Proposed Settlements, Plan of Allocation of Settlement Proceeds, and Application for Attorneys' Fees and Reimbursement of Litigation Expenses in the Pilgrim Baxter Sub-Track (the "BLB&G Declaration" or "BLB&G Decl.") filed on September 14, 2010 (Dkt. No. 1343-2).

they represent an excellent result for the Settlement Class and the PBHG Successor Funds, and fully warrant the Court's approval.

As described in the opening papers, pursuant to the Court's Preliminary Approval Order, an extensive and thorough Notice Program was implemented to advise those with an interest in the settlements of the existence of the Settlements and their rights related thereto, consistent with due process and relevant law and procedural rules. *See* Settlement Memorandum (Dkt. No. 1343-1) at §§ II.C.4, V. Specifically, as of October 1, 2010, over 500,000 Notices have been mailed to potential members of the Settlement Class. *See* Supplemental Declaration of Stephen J. Cirami Concerning the Notice Program and Report on Exclusion Requests Received in the Pilgrim Baxter Sub-Track (the "Cirami Supplemental Decl."), attached to the BLB&G Supplemental Decl. as Exhibit 1, at ¶ 5.

A. The Settlements, the Plan of Allocation, and the Request for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses in the Pilgrim Baxter Sub-Track Should Be Approved Notwithstanding Any Objections That Have Been Expressed

As the opening papers established, the reaction of the Settlement Class and current fund shareholders to the Settlements, the Plan of Allocation and the requested award of attorneys' fees and litigation expenses was overwhelmingly positive. *See* Settlement Memorandum at § II.C.4; Fee & Expense App. Memorandum (Dkt. No. 1344-1) at § IV.C.6. That trend continued through the objection deadline. Indeed, an empirical reference point for the Settlement Class's non-opposition to and satisfaction with the settlements is the significant number of Settlement Class Member claims that have been submitted to date: over 17,500. *See, e.g., In re Tyson Foods Inc.*, Civ. A. No. RDB-08-1982, 2010 WL 1924012, at *3 (D. Md. May 11, 2010) (fact that "significant number of class members" had already filed claims, supported the fairness and adequacy of the proposed settlement); *In re Prudential Secs. Inc. Ltd. P'Ships Litig.*, MDL No.

1005, 1995 WL 798907, at *13 (S.D.N.Y. Nov. 20, 1995) (fact that "low number of objections have been received, and a large number of claims have been filed" supported approval of settlement); *see* Cirami Supplemental Decl. ¶ 20. The 17,500 plus claims that have been filed represent an increase of over 2,600 claims since the opening papers were submitted less than one month ago, and numerous additional claims are anticipated in the next two months or so before the December 8, 2010, deadline for filing claims.[2] Thus, if the Settlements are approved, many thousands of people stand to benefit from them.

With two separate Actions resolved by the Settlements and a Notice Program that resulted in over 500,000 mailings of the Notice and various forms of publication notice, it is not surprising that some objections have been received – as of October 6, 2010, a total of nine (9). *See* BLB&G Supplemental Decl. ¶ 5. There have also been 17 requests for exclusion received as of October 5, 2010. *See* Cirami Supplemental Decl. ¶ 21. As detailed in the Settlement Memorandum, in considering approval of a proposed class action settlement, the small number of objections and opt-outs in comparison to the size of the settlement class provides evidence of the fairness of the Settlements. *See, e.g., In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 318 (3d Cir. 1998) (300 objections by class members and 19,000 opt-outs were "truly insignificant" in comparison to the 8 million policyholders provided with class notice and thus, "the limited number of objections filed . . . weighed in favor of approving the settlement"); *see generally* Settlement Memorandum at § II.C.4. Plaintiffs respectfully submit that the number of objections received is quite small in comparison to the size of the Settlement Class.[3] Moreover, the fact that none of the objections and only one of the requests for

[2] *See* Cirami Supplemental Decl. ¶ 20. In the experience of the Claims Administrator, many claims and institutional/electronic claims in particular, are often filed near or at the deadline. *See id.*

[3] Even where there are relatively numerous objections, which is not the case here, "a settlement is not

exclusion were filed by institutional investors supports the conclusion that a proposed settlement is fair and reasonable.[4] *See id.* In any event, as discussed below, the objections that have been raised lack merit. These objections are addressed below.[5] For the convenience of the Court and the parties, Plaintiffs' Counsel have categorized the objections, below, based on their understanding of the primary concern(s) raised in each objection, although certain objections raise several points.

Adequacy of Settlements. Five objectors, Thomas E. Shaw, John H. Lawrence, Audrey J. Doshi, James G. Daniel and Marlene Kinzel, generally oppose the Settlements. *See* BLB&G Supplemental Decl. Ex. 2, at lines 1, 2, 3, 6, and 9, respectively.[6] Mr. Daniel, who made substantially similar objections in at least three other sub-tracks, takes issue with the size of the settlement recovery, deeming it a "token penalty," and asserts that the defendants are not being adequately punished. Mr. Lawrence objects because he does not believe that "the terms of settlement as specified will benefit the poor people that los[t] their life savings." Ms. Kinzel believes that the Settlements should give investors "a return equal to [their] investment." Mr. Shaw objects to the Settlements of the Derivative Actions because he believes that the "amount

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unfair or unreasonable simply because a large number of class members oppose it." *Flinn v. FMC Corp.*, 528 F.2d 1169, 1173 (4th Cir. 1974).

[4] "Institutional investors" means entities such as "pension funds, mutual funds, banks, and other professional investors." *In re Recoton Corp. Sec. Litig.*, 248 F.R.D. 606, 612 (M.D. Fla. 2006). As noted above, here, not a single institutional investor has objected to the Settlements. One request for exclusion was submitted by Fidelity Investments on behalf of a retirement plan that held a small number of shares in a Fidelity omnibus account. Although Koch Industries, Inc., a privately-held diversified company, and its affiliates have also requested exclusion from the Settlements, it is not an "institutional investor" in the sense traditionally understood by courts.

[5] As Class Lead Counsel previously had informed the Court, efforts were made by Class Lead Counsel and by The Garden City Group, Inc. to respond to any and all inquiries about the Settlements – including those that took the form of complaints or objections. As highlighted below, that outreach often resulted in the resolution of the concerns that had been raised.

[6] As discussed below, Mr. Shaw, Mr. Lawrence, Ms. Doshi and Ms. Kinzel also object to the attorneys' fees requested by Plaintiffs' Counsel and Ms. Doshi also objects to the Plan of Allocation.

paid to the shareholders is drastically dwarfed by the amount of expenses and fees paid to the attorneys and class representatives," and is not "reflective of the amount of damage caused by the defendants." Ms. Doshi objects to the Settlements of the Derivative Actions but does not state a basis for her objection.

As explained in detail in the opening papers, and as the Court is aware, these were extremely complex cases, and Plaintiffs faced significant risks in obtaining any recovery if they were to proceed with continued litigation and a possible trial. Indeed, in the Class Action, Class Lead Plaintiff would have faced significant obstacles in establishing the liability of the Settling Defendants and proving damages above the significant amounts that certain Settling Defendants had already paid in restitution to government regulators. Similarly, Fund Derivative Plaintiffs would have faced significant obstacles to show that damages recoverable in the Derivative Action exceeded the amount of regulatory settlement monies paid to the successors to the PBHG Funds at the conclusion of the Fair Fund distribution process. Thus, in light of the considerable hurdles facing Plaintiffs in this litigation, a recovery in excess of $31.5 million in these Settlements is an extraordinary result for investors in the PBHG Funds.

Certain of the objectors, such as Mr. Lawrence and Ms. Kinzel, appear to believe that the recovery under the Settlements should be equal to the market loss suffered by investors in the PBHG Funds. However, any settlement is a compromise that reflects the risks of litigation as well as the amount of damages recoverable. In any event, even if the cases were litigated to a final, non-appealable judgment in favor of Plaintiffs, it is well established that damages recoverable under the securities laws are limited to those than resulted from defendants' false or misleading statements or omissions (in this case, concerning late trading and market timing in the PBHG Funds) and therefore not all losses suffered by investors as a result of market declines

or for other reasons were compensable in these Actions. Moreover, as detailed in the original papers, the Settlements of the Derivative Action are also fair and reasonable in light of the significant risks of continued litigation in that Action.

Claims Process. Two of the objectors – Ellison Marie Pidot and Bernard Victorino – expressed dissatisfaction with the claims process. *See* BLB&G Supplemental Decl. Ex. 2, at lines 4 and 5. These objections generally take issue with the requirement that Settlement Class Members provide information or documentation concerning their ownership of the PBHG Funds.

As explained in detail in the opening papers, in order to administer the proposed Plan of Allocation and accomplish a distribution of the Net Settlement Fund that bears a reasonable relation to the strength of Settlement Class Members' relative claims, it is necessary for Settlement Class Members to submit only basic information and documents demonstrating their ownership of PBHG Funds during the Class Period. Claimants are simply required to submit basic year-end information, instead of the detailed purchase and sale transaction information typically required in securities fraud class actions. In addition, the documentation requirement here is flexible by design – the claim form does not require any specific type of documentation of the shares held – and class members are encouraged to submit the best documentation they reasonably have or can obtain, such as tax filings, a signed letter from an accountant or broker, or any other verified information.

Furthermore, with respect to the Settlement Class Members for whom Old Mutual (Pilgrim Baxter's successor) possesses shareholding information – generally those investors who purchased or held shares directly with Pilgrim Baxter – a streamlined process has been developed and implemented allowing class members to call representatives of Old Mutual at a designated toll-free number and receive information concerning their PBHG Funds holdings, free

of charge, that will allow them easily to complete the claim form and will be considered sufficient documentation to support the claim. As evidenced by the more than 17,500 claims that have already been filed in the Pilgrim Baxter sub-track, Plaintiffs respectfully submit that the Court-approved claims process is functioning as an effective method for Settlement Class Members to demonstrate that they are entitled to payment from the settlement proceeds. *See, e.g., In re WorldCom, Inc. Sec. Litig.*, No. 02 CIV 3288 (DLC), 2004 WL 2591402, at *12 (S.D.N.Y. Nov. 12, 2004) (rejecting an objection to length and complexity of claim form and requirement of submitting transaction information where numerous class members had already filed claim forms).[7]

Plan of Allocation. Two objections have been made to the proposed Plan of Allocation, by Audrey Doshi and Stephen Cotanch. *See* BLB&G Supplemental Decl. Ex. 2, at lines 3 and 8. Ms. Doshi provides no reason for her objection to the Plan of Allocation. Mr. Cotanch objects to the provisions of the Plan of Allocation that calculate claimants' Recognized Claim based on the number of shares owned at the end of each yearly interval without considering the amount of shares held during the course of the year. After extensive consideration of this issue, Class Lead Counsel drafted the Plan of Allocation to calculate Recognized Claims based only on end-of-year holdings, rather than on an average yearly balance or on multiple dates throughout the year, in order to simplify the claims process and minimize the shareholding information required from Settlement Class Members. This approach also recognizes that many Settlement Class Members were "buy and hold" investors. Mr. Cotanch's alternative approach would have required submission of much more detailed shareholding information by claimants. Class Lead

[7] Each of these objectors was contacted to provide appropriate information and assistance concerning the various ways that shareholding information may be obtained – including, for example, by contacting Old Mutual toll-free for such information, to the extent that information is available.

Counsel believe that the proposed Plan of Allocation represents a reasonable approach that recognizes the relative strength of class members' claims based on their year-end holdings while minimizing the shareholding information required. Courts have repeatedly recognized that allocation formulas "need only have a reasonable and rational basis" and need not weigh class members' claims with "scientific precision." *In re The Mills Corp. Sec. Litig.*, 265 F.R.D. 246, 258 (E.D. Va. 2009); *accord In re PaineWebber Ltd. P'ships. Litig.,* 171 F.R.D. 104, 133 (S.D.N.Y.), *aff'd*, 117 F.3d 721 (2d Cir. 1997).

Requested Award of Attorneys' Fees and Litigation Expenses. Objectors Thomas E. Shaw, John H. Lawrence, Audrey J. Doshi, Anita J. McKenney and Marlene Kinzel have submitted objections concerning Plaintiffs' Counsel's request for attorneys' fees in the Pilgrim Baxter sub-track. *See* BLB&G Supplemental Decl. Ex. 2, at lines 1, 2, 3, 7 and 9. Mr. Shaw and Mr. Lawrence generally object to the amount of attorneys' fees and expenses in relation to the size of the Settlements.[8] Ms. McKenney believes that the Settlements are a "ripoff to enrich attorneys." Ms. Kinzel believes that the attorneys' fees and expenses should be charged back to Pilgrim Baxter rather than borne by the class.[9] Ms. Doshi provides no basis for her objection.

As explained in detail in the opening papers, and as the Court is well aware, Plaintiffs' Counsel devoted a substantial amount of time and resources and overcame significant obstacles in achieving the excellent recovery in this litigation. In light of the results obtained, the

[8] The objections of Mr. Shaw and Mr. Lawrence also concern the amount paid to class representatives. *See* BLB&G Supplemental Decl. Ex. 2, at lines 1 and 2. These objections are meritless. Class Lead Plaintiff, the Ohio Public Employees Deferred Compensation Plan, will receive the same *pro rata* share of the Net Settlement Fund as any other class member, as calculated under the Plan of Allocation based on the number of shares in the PBHG Funds it owned during the Class Period. Class Lead Plaintiff is also seeking reimbursement for a modest amount of expenses actually incurred or to be incurred in representing the Settlement Class, totaling $5,350.

[9] Where defendants settle a class action with a cash payment that results in a common fund for the class, it is appropriate that attorneys' fees be paid from the common fund established. *See Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980).

complexity and amount of work involved, the attorney skill and expertise required, and the substantial risks of non-recovery that counsel undertook, the requested collective award of 15% of the Gross Settlement Fund is appropriate compensation for Plaintiffs' Counsel, and the requested 1.25% award for attorneys' fees and litigation expenses of Liaison Counsel is appropriate payment for its services performed in this matter. The overwhelmingly positive reaction to Plaintiffs' Counsel's fee and expense request further supports approval of the requested amounts. *See, e.g., In re Xcel Energy, Inc. Sec., Derivative & ERISA Litig.*, 364 F. Supp. 2d 980, 996-98 (D. Minn. 2005) (where seven objectors from a class of 265,000 objected to attorneys' fees, the court found this a "miniscule number" which demonstrated that the reaction of the class supported the fee award); *In re Lucent Techs. Inc. Sec. Litig.*, 327 F. Supp. 2d 426, 435 (D.N.J. 2004) ("lack of a significant number of objections is strong evidence that the fees request is reasonable"). Moreover, as discussed in the memorandum in support of Plaintiffs' Counsel's motion for fees and expenses, federal courts in this Circuit and around the nation have consistently awarded fees in securities fraud cases and other comparable class actions that are similar or substantially higher than those requested here. *See In re Veritas Software Corp. Sec. Litig.*, No. 08-3627, 2010 U.S. App. LEXIS 20500, at *9 (3d Cir. Oct. 4, 2010) (unpublished opinion) (affirming approval of a 30% fee award for a $21.5 million settlement, and noting that the district court appropriately considered the fact that "counsel spent four years, and thousands of hours of attorneys' labor, litigating this case"); *see also* Fee & Expense App. Memorandum at § IV.A.[10]

[10] As discussed in the BLB&G Supplemental Declaration, the amount of litigation expenses for which reimbursement is being sought has been adjusted slightly since the September 14, 2010 filing to reflect the final accounting for a residual amount in the Litigation Fund. Specifically, the total expenses for which reimbursement is sought (including the expenses of Class Lead Plaintiff) have been reduced by $4,969.31, to $529,997.54.

B. The "Objections" of Attorney Theodore Bechtold Should Be Rejected Because Bechtold Lacks Standing and His Objections Lack Merit

In addition to the objections addressed above, Attorney Theodore A. Bechtold has submitted objections on behalf of a client in the Strong sub-track and he urges that the Court consider and apply like objections to all other sub-tracks in the MDL. (04-md-15864, Dkt. Nos. 1062, 1068.) Bechtold admits that he lacks a client who is affected by the Settlements in the Pilgrim Baxter sub-track (or in any sub-track other than Strong). Bechtold's failure to step forward with a client is not for any lack of trying. Bechtold has extensively trolled the internet in search of persons willing to further his agenda of objecting to the mutual fund settlements.[11]

It is black-letter law that only a class member has standing to object to a proposed settlement and, accordingly, Bechtold's objections to the Pilgrim Baxter Settlements should be summarily rejected. *See* Fed. R. Civ. P. 23(e)(5) ("Any ***class member*** may object to the [settlement] proposal if it requires court approval . . ."") (emphasis added); *Gould v. Alleco, Inc.*, 883 F.2d 281, 284 (4th Cir 1989) ("non-class members have no standing to object . . . to a proposed class settlement"); *In re CP Ships Ltd. Sec. Litig.*, No. 8:05-MD-1656, 2008 WL 2473684, at *1-*2 (M.D. Fla. June 19, 2008) (noting that "only 'class members' may object to a proposed class action settlement" and rejecting objection by a plaintiff in a parallel class action for lack of standing).

Indeed, Bechtold should be well aware of the basic requirement of standing: on at least one other occasion, he sought to raise objections in a securities class action despite his lack of a

[11] *See, e.g.,* Mutual Fund Objector, http://www.mutualfundobjector.com/ (visited Aug. 23, 2010) ("Whatever your reason for objecting I can provide a way which may effect [sic] the outcome of these cases and possibly improve your recovery. The only way I can successfully do so is if I represent actual clients that are Class members. You will never have to pay me a fee. My compensation will result from the financial benefits gained by all class members when we are successful.") (BLB&G Supplemental Decl. Ex. 3); Facebook – Mutual Fund Objector, http://www.facebook.com/pages/Mutual-fund-objector/145418755482040 (visited Sept. 23, 2010) (BLB&G Supplemental Decl. Ex. 4).

class member as a client, and the court refused to consider his objections. *See In re Genta Sec. Litig.*, No. 04-2123 (JAG), 2008 WL 2229843, at *5 (D.N.J. May 28, 2008) ("Bechtold's objections should not be taken into consideration because he submitted no information identifying any potential members of the Settlement Class on whose behalf he was speaking. Indeed, Bechtold admitted at the Fairness Hearing that he has no standing to raise objections against the Settlement.").

Moreover, as another court has recognized, "Bechtold [is] a serial objector." *See In re Initial Pub. Offering Sec. Litig.*, No. 21 MC 92 (SAS), 2010 WL 2884794, at *2 (S.DN.Y. July 20, 2010). "Federal courts are increasingly weary of professional objectors . . . who seek out class actions to simply extract a fee by lodging generic, unhelpful protests." *O'Keefe v. Mercedes-Benz USA, LLC*, 214 F.R.D. 266, 295 n.26 (E.D. Pa. 2003).

In any event, Bechtold's objections lack merit. Bechtold's generalized objections to the attorneys' fees sought and to the requirement that Class Members provide documentation of their ownership of the relevant mutual funds should be rejected for the reasons discussed in the opening papers and herein. Bechtold also raises several other unmeritorious arguments that have not been raised by a single one of the hundreds of thousands of Settlement Class Members who actually do have standing to raise such objections. In light of Bechtold's admitted lack of standing to raise these arguments, the merits of his objections will be addressed briefly here.

Notice. Bechtold's "objection" to the notice provided to Class Members is so generic and lacking in any specific reference to the distinct notices used in each sub-track that it hardly merits discussion. In any event, as discussed in Lead Plaintiffs' earlier papers, the Notice used in the Pilgrim Baxter sub-track contained all the information required by the PSLRA and Rule 23. Courts have recognized that in the interest of providing sufficiently detailed and legible

information to class members, the PSLRA requirement that certain information appear in a "cover page" is not applied formulaically, so long as all the required information is included prominently in an early portion of the notice. *See In re Indep. Energy Holdings PLS Sec. Litig.*, 302 F. Supp. 2d 180, 184-85 (S.D.N.Y. 2003) (notice was valid where PSLRA cover page information was spread over two pages, so long as it was "readily ascertainable and understandable"); *McNamara v. Bre-X Minerals Ltd.*, 214 F.R.D. 424, 432 (E.D. Tex. 2002) (same).

Attorneys' Fees. In addition to making generalized arguments about the excessiveness of the attorneys' fees sought (which make no reference at all to individual sub-tracks, despite the different facts surrounding each settlement and the differences in the percentage fees sought), Bechtold also argues that any legal fees should be awarded as a percentage of the net settlement fund (that is, of the settlement fund after deduction of expenses). However, courts in this Circuit routinely award attorneys' fees as a percentage of the total (gross) settlement amount. *See, e.g., Mills*, 256 F.R.D. at 266 (awarding "18% of the total Settlement Fund"); *Jones v. Dominion Res. Servs.*, 601 F. Supp. 2d 756, 766 (S.D.W.Va. 2009) (awarding 20% of total settlement fund); *see also, e.g., In re AT&T Corp.*, 455 F.3d 160, 172 n.8 (3d Cir. 2006) (rejecting objector's view that attorneys' fees must be calculated based on the net settlement amount, noting that "[e]xpenses are generally considered and reimbursed separately from attorneys' fees"); *Powers v. Eichen*, 229 F.3d 1249, 1258 (9th Cir. 2000) (holding that district court did not err in calculating attorneys' fees as a percentage of gross recovery and observing that "the choice of whether to base an attorneys' fee award on either net or gross recovery should not make a difference so long as the end result is reasonable"). Whatever denominator is used as the basis for the percentage method, the relevant question is whether the attorneys' fees awarded are reasonable. *See Powers*,

229 F.23d at 1258. As discussed above and in Plaintiffs' Counsel's earlier papers, the fee requested here is reasonable.[12]

Minimum Payments. Bechtold also objects to provisions of the various plans of allocation that require a certain level of recovery before payments will be made (in the Pilgrim Baxter sub-track, $20). A minimum payment threshold is a common feature of allocation plans in securities class actions – a feature which benefits the class as a whole by eliminating payments to claimants for whom the cost of processing claims and printing and mailing checks would likely exceed the value of their claim. Such minimum payment thresholds have been repeatedly upheld. *See, e.g., In re Merrill Lynch & Co. Research Reports Sec. Litig.*, No. 02 MDL 1484 (JFK), 2007 WL 4526593, at *12 (S.D.N.Y Dec. 20, 2007) (approving $50 minimum distribution amount and noting that "courts have approved minimum payouts in class action settlements in order to foster the efficient administration of the settlement."); *In re Sprint Corp. ERISA Litig.*, 443 F. Supp. 2d 1249, 1268 (D. Kan. 2006) ($25 minimum approved); *In re Global Crossing Sec. & ERISA Litig.,* 225 F.R.D. 436, 463 (S.D.N.Y. 2004) ("[c]lass counsel are entitled to use their discretion to conclude that, at some point, the need to avoid excessive expense to the class as a whole outweighs the minimal loss to the claimants who are not receiving their *de minimis* amounts of relief"); *see generally* 3 ALBA CONTE & HERBERT B. NEWBERG, NEWBERG ON CLASS ACTIONS § 10:14, at 512 n.12 (4th ed. 2002) ("most distribution schemes for class recovery provide a minimum threshold amount of a claim for eligibility to participate") 2 JOSEPH M. MCLAUGHLIN, MCLAUGHLIN ON CLASS ACTIONS § 6:22 (6th ed. Westlaw 2009) ("Courts have recognized that minimum payment thresholds for payable claims benefit the class as a whole

[12] Bechtold also argues that attorneys' fees are excessive in part because of counsel's alleged extensive reliance on the SEC investigations. This is not the case. The Actions in this sub-track were initiated and well under way before several of the SEC civil enforcement actions gained traction. In fact, the amounts paid by certain defendants in their regulatory settlements were put forward by those same defendants as a defense to Plaintiffs' recovery in these Actions.

because they protect the settlement fund from being depleted by the administrative costs associated with claims unlikely to exceed those costs."). Tellingly, none of the class members who actually owned shares in PBHG Funds during the Class Period and who, thus, might actually be affected by the *de minimis* provision have objected to it.

II. CONCLUSION

For the reasons stated herein and in the opening papers, Plaintiffs and Plaintiffs' Counsel respectfully request that the Court grant the pending motions (i) for final approval of the proposed Settlements and the Plan of Allocation in the Pilgrim Baxter sub-track; and (ii) for an award of attorneys' fees and reimbursement of litigation expenses in the Pilgrim Baxter sub-track. Furthermore, for all the reasons set forth above and in the opening papers, it is respectfully submitted that each of the objections submitted in the Pilgrim Baxter sub-track lack merit and should be overruled by the Court.

DATED: October 6, 2010

Respectfully submitted,

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