

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

SUSAN E. BREDTHAUER, et al.,

Plaintiffs,

v.

GILBERT G. LUNDSTROM, et al.,

Defendants.

4:10CV3132

ORDER

RONALD A. LAIRD, et al.,

Plaintiffs,

vs.

GILBERT G. LUNDSTROM, et al.,

Defendants.

4:10CV3139

ORDER

SUSAN BARKER, et al.,

Plaintiffs,

vs.

SAMUEL P. BAIRD, et al.,

Defendants.

8:10CV326

ORDER

This matter is before the court on the Stipulation of Class Counsel and Rick D. Lange, Chapter 7 Bankruptcy Trustee of TierOne Corporation, Filing No. 225 in 4:10CV3132; Filing No. 211 in 4:10CV3139, and Filing No. 184 in 8:10CV326. In the Stipulation and Order entered February 28, 2013, and the Order and Final Judgment entered March 4, 2013, that resolved these consolidated ERISA class action cases, it was contemplated that the Trustee would perform certain duties in order to effectuate the Settlement and would incur fees and costs for doing so that would be paid from the

Settlement Fund with the approval of Class Counsel and the District Court. See Filing Nos. 221, Stipulation & Order at 2; Filing No. 222, Order & Final Judgment at 2.

Class Counsel and the Trustee stipulate that the Trustee and his general counsel, Rembolt Ludtke, LLP, and his special counsel, Matthew Borrer, and PenChecks, Inc. (“PenChecks”), are entitled to compensation from the assets of the portion of the Net Settlement Fund that were paid to the TierOne Corporation Employee Stock Option Plan (the “ESOP”) as follows: \$10,255 for time spent or anticipated to be spent by the Trustee and his general counsel, Remboldt Ludtke, LLP; \$18,987.50 for time spent or anticipated to be spent by Matthew Borrer, special ERISA counsel; and an amount yet to be determined amount for PenChecks for future missing participant/default IRA and related services in accordance with the schedule attached to the stipulation as Exhibit B. See Filing No. 225, Stipulation at 2. No objections or other responses to the stipulation have been filed.

In support of the stipulation, the parties submit copies of the invoices for the time incurred and anticipated to be incurred by the Trustee and his general and special counsel, as well as a fee schedule for PenChecks, Inc. *Id.*, Ex. A, Invoices; Ex. B, PenCheck Fee Schedule.

Under 29 U.S.C. §§ 1103(c)(1) and 1106(b)(2), assets held in an ERISA plan such as the ESOP may be used to pay reasonable expenses of administering and terminating the ESOP, including the expenses sought herein. The court has reviewed the parties’ submissions and finds the compensation sought herein is fair and reasonable.

Special Counsel Matthew Borrer seeks fees for 54.25 hours of work at the rate of \$350.00 per hour for a total of \$18,987.50, and general counsel, Remboldt Ludtke, LLP, seeks fees in the amount of \$10,255.00 for 37.4 hours of work at rates of \$240 to \$285 per hour. *Id.*, Ex. A.

Based on its familiarity with the litigation, the court finds the time spent and/or anticipated to be spent by counsel and the fees for PenChecks, Inc., are reasonable and necessary in the administration and termination of the ESOP¹. Further, based on its familiarity with fees in this community, the court finds counsels' rates are reasonable in view of the nature of the litigation and the complexity of the issues. Accordingly, the court hereby approves the compensation sought herein and will order the payments to be made from the assets of the portion of the Net Settlement Fund that was paid to the TierOne Corporation Employee Stock Option Plan.

IT IS ORDERED that:

1. The Trustee and his general counsel, Rembolt Ludtke LLP, are entitled to compensation from the assets of the portion of the Net Settlement Fund paid to the TierOne Corporation Employee Stock Option Plan (the "ESOP") in the amount of \$10,255 for time spent or anticipated to be spent in the future.

2. The Trustee's special counsel, Matthew Borrer, is entitled to compensation from the assets of the portion of the Net Settlement Fund paid to the

¹ PenChecks, Inc. will be paid \$45 per participant for its services in connection with sending distribution election forms and tax notices to eligible ESOP participants, processing the requests of those who respond, issuing corresponding IRS Form 1099-Rs and addressing all federal and/or state tax-withholding issues. Filing No. 225, Ex. B. For those who do not respond, PenChecks will be paid 20% of the account balance not to exceed \$25 for a setup fee, \$45 per nonrespondent for an Administration Fee, and 20% of the account balance not to exceed \$20 for IRA Distribution Fee. *Id.*

ESOP in the amount of \$18,987.50 for time spent or anticipated to be spent in the future.

3. PenChecks is entitled to compensation in an amount as yet to be determined from the assets of the ESOP for PenChecks for future missing participant/default IRA and related services in accordance with the agreement attached to the stipulation as Exhibit B (Filing No. 225), which the Trustee is authorized to execute and deliver.

DATED this 11th day of March, 2014,

BY THE COURT:

s/ Joseph F. Bataillon
United States District Judge