

1 **SUSAN MARTIN (AZ#014226)**  
2 **DANIEL L. BONNETT (AZ#014127)**  
3 **JENNIFER KROLL (AZ#019859)**  
4 **MARTIN & BONNETT, P.L.L.C.**  
5 1850 N. Central Ave. Suite 2010  
6 Phoenix, Arizona 85004  
7 Telephone: (602) 240-6900  
8 [smartin@martinbonnett.com](mailto:smartin@martinbonnett.com)  
9 [dbonnett@martinbonnett.com](mailto:dbonnett@martinbonnett.com)  
10 [jkroll@martinbonnett.com](mailto:jkroll@martinbonnett.com)

**SHAUN P. MARTIN, Pro Hac Vice**  
**UNIVERSITY OF SAN DIEGO**  
**SCHOOL OF LAW**  
5998 Alcala Park, Warren Hall  
San Diego, CA 92110  
Telephone: (619) 260-2347  
[smartin@sandiego.edu](mailto:smartin@sandiego.edu)

11 **PETER K. STRIS, Pro Hac Vice**  
12 **STRIS & MAHER, LLP**  
13 19210 S. Vermont Ave., Bldg. E  
14 Gardena, CA 90248  
15 Telephone: (424) 212-7090  
16 [Peter.stris@strismaher.com](mailto:Peter.stris@strismaher.com)

17 Attorneys for Plaintiffs

18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Barbara Allen, Richard Dippold, Melvin  
Jones, Donald McCarty, Richard Scates  
and Walter G. West, individually and on  
behalf of all others similarly situated,

Plaintiffs,

vs.

Honeywell Retirement Earnings Plan,  
Honeywell Secured Benefit Plan, Plan  
Administrator of Honeywell Retirement  
Earnings Plan, and Plan Administrator  
of Honeywell Secured Benefit Plan,

Defendants.

No. CV04-0424 PHX ROS

**PLAINTIFFS' MOTION FOR  
AWARD OF ATTORNEYS' FEES  
AND COSTS**

**(Fairness Hearing to be held April 27,  
2012 at 2:00 p.m.)**

1 Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Rule 54.2 of the  
2 Local Rules of Civil Procedure and the Order of this Court preliminarily approving the  
3 Class Action Final Settlement Agreement (“Settlement” or “Agreement”), (Doc. 742),  
4 and in accordance with the provisions of the Agreement, Class Counsel respectfully  
5 requests that the Court award attorneys’ fees in the amount of \$5,750,000, which is 25%  
6 of the common benefit fund created under the Settlement Agreement plus \$800,000 in  
7 costs of the litigation to be paid directly by Defendants in addition to the settlement fund  
8 of \$23 million (\$23,000,000). This motion is supported Declaration of Susan Martin in  
9 Support of Plaintiff’s Motion for Award of Attorneys’ Fees and Costs dated March 30,  
10 2012 and the exhibits thereto (“Martin Decl.”), the Declaration of Shaun Martin in  
11 Support of Plaintiff’s Motion for Award of Attorneys’ Fees and Costs and exhibit thereto,  
12 the Declaration of Peter Stris in Support of Plaintiff’s Motion for Award of Attorneys’  
13 Fees and Costs and exhibit thereto, and the record before this Court.

14 **MEMORANDUM OF POINTS AND AUTHORITIES**

15 The Final Settlement is an excellent result for the class members. If the Court  
16 awards the requested fees and costs, Group A members, who were damaged under a “net  
17 effect” test will receive 37% of the value of their damages and all Group B members will  
18 receive \$500 each. This Final Settlement amount of \$23,000,000 plus \$800,000 in costs  
19 that will be utilized to pay the expenses of the lawsuit (including reimbursement to  
20 individuals who helped fund this lawsuit through contributions to the Garrett Retirees  
21 Action Committee) is a significant achievement.

22 **BACKGROUND**

23 Plaintiff respectfully refers the Court to the parties’ joint motion for preliminary  
24 approval of the Amended Final Settlement, (Doc. 738, at pp. 13-15) for a detailed  
25 description of the claims and litigation preceding the Final Settlement. By way of  
26 summary, after filing administrative claims and appeals in 2002 and 2003, Plaintiffs  
27 commenced the litigation on March 1, 2004, claiming Defendants had violated ERISA,  
28 and the terms of the Garrett Retirement Plan, the Garrett Severance Plan, and the

1 applicable successor plans. Defendants moved to dismiss the Complaint and Plaintiffs  
2 cross-moved for partial summary judgment. On July 19, 2005, the Court granted partial  
3 summary judgment for Plaintiffs on some of their claims, and dismissed with prejudice  
4 many others.

5 After limited discovery and extensive negotiations, the parties entered into a  
6 Partial Settlement Agreement in October 2007, which was approved by the Court on  
7 February 7, 2008. Pursuant to the Partial Settlement Agreement, Defendants paid  
8 Plaintiffs over \$35 million, and agreed to stop charging administrative fees to the Secured  
9 Benefit Accounts. In exchange, Plaintiffs released all claims except the Three Remaining  
10 Claims, defined as the SBA Offset Claim, the Social Security Offset Claim and the  
11 Minimum Benefits Claim.

12 The briefing in this case on the Three Remaining Claims has been extensive.  
13 There were 747 docket entries prior to the filing of this motion for fees and costs. This  
14 Court has rendered numerous decisions, including two published opinions. Since the  
15 Partial Settlement, there have been numerous substantive motions including Defendants'  
16 Motion for Reconsideration based on a Treasury letter, (Doc. 323), Defendants' motion  
17 for summary judgment on the Minimum Benefits Claim, (Doc. 510), cross-motions for  
18 summary judgment on the statute of limitations, (Docs. 340, 343), and cross-motions for  
19 summary judgment on all remaining claims and defenses, (Docs. 677, 678), which were  
20 *sub judice* at the time the Agreement was reached.

21 Class Counsel vigorously litigated this case both before and after the Partial  
22 Settlement. Following approval of the Partial Settlement agreement, Class Counsel  
23 undertook or defended thirty-six depositions at numerous locations around the country.  
24 (Martin Decl. ¶ 9.) With regard to the Three Remaining Claims, Class Counsel reviewed  
25 and analyzed tens of thousands of documents that were produced by Defendants. (*Id.*)  
26 Plaintiffs successfully made a motion to compel documents that Defendants claimed were  
27 privileged, (Doc. 559), including a follow-up motion to compel fiduciary documents that  
28 resulted in the production of many more documents by Defendants. (Doc. 587 p. 2.)

1 Plaintiffs also successfully moved to compel testimony on a Retirement Plan amendment  
2 that was adopted in the year 2000. (Doc. 626.)

3 Class Counsel has spent hundreds of hours working with its actuarial experts. This  
4 case involved complex benefits and damages analysis covering a period of more than 27  
5 years. Defendants retained two nationally recognized actuarial firms to serve as experts.  
6 Plaintiffs engaged three highly experienced ERISA actuarial firms, all of whom rendered  
7 reports in this case and for whom depositions were extremely complex and lengthy, in  
8 certain instances spanning multiple days. (Martin Decl. ¶ 10.)

9 In May 2011, the parties engaged in a two day arms-length mediation with Eric  
10 Green, a mediator with expertise in large class action mediation who had assisted with  
11 the mediation that resulted in the Partial Settlement. The Final Settlement process has  
12 also involved substantial effort. Pursuant to the terms of the Settlement and the Plan of  
13 Allocation, Martin & Bonnett was required to undertake responsibility for a Plan of  
14 Allocation, creating a final settlement payment list and for administering the claims  
15 process. Class Counsel has spent enormous amounts of time instructing and overseeing  
16 the actuaries and the claims administrator, evaluating information submitted by surviving  
17 spouses and estate representative of deceased Participants and Beneficiaries and  
18 responding to inquiries from class members. (Martin Decl. ¶¶ 12-14.)

## 19 **I. SUMMARY OF THE SETTLEMENT**

20 Class Counsel's actuary estimated that the value of the losses to the Settlement  
21 Class under a "net effect" analysis was approximately \$29.3 million. The Final  
22 Settlement provides for benefits of \$23,000,000, minus any amounts awarded for  
23 attorneys' fees plus an additional amount of \$800,000 towards the reimbursement of the  
24 costs and expenses of the litigation which total well in excess of one million dollars.

25 Class Counsel worked extensively with Class Counsel's actuaries to create an  
26 equitable plan of allocation that divides the Participants into two groups – Group A and  
27 Group B.<sup>1</sup> Group A includes all Settlement Class members who are Participants listed in  
28

1 the Database for whom Class Counsel's actuary has determined that they in fact received  
2 or were scheduled to receive lesser benefits under the Signal Retirement Plan, Allied  
3 Signal Retirement Program or the Retirement Plan compared to the value of the  
4 retirement benefits that would have been paid under the Garrett Retirement Plan if the  
5 Garrett Retirement Plan had not been amended effective December 31, 1983. If the  
6 motion for attorneys' fees and costs is approved and if the Settlement achieves Final  
7 Approval, the Settlement will provide to all Group A Participants 37% of their individual  
8 proportionate percentage share of the present value of the difference between the value of  
9 benefits paid or to be paid to them under the Signal Retirement Plan, Allied Signal  
10 Retirement Program or the Retirement Plan and the value of the retirement benefits that  
11 would have been paid to them under the Garrett Retirement Plan if the Garrett Retirement  
12 Plan had not been amended effective December 31, 1983.

13 Group B includes all Settlement Class members who are Participants listed in the  
14 Database will each receive a Final Settlement Benefit of \$500 if the Court grants Class  
15 Counsel's motion for attorneys' fees. If the motion for attorneys' fees and costs is  
16 approved and if the Settlement achieves Final Approval, all Group B Participants will  
17 receive an equal per capita share of Final Settlement benefits of \$500.

18 **II. CLASS COUNSEL'S REQUEST FOR ATTORNEYS' FEES AND COSTS**  
19 **IS FAIR AND REASONABLE**

20 **A. An Award of Attorneys' Fees from the Common Fund is Appropriate**

21 Class Counsel respectfully requests the Court to exercise its discretion to award  
22 the attorneys' fees requested here in the amount of 25% of the common fund. In *Paul*,

---

23  
24 <sup>1</sup>There is a third Settlement Group, Group C. Group C Members include, *inter alia*, all  
25 Settlement Class members whom Class Counsel has determined are not entitled to any  
26 recovery under the Final Settlement Agreement because they could not or would not have  
27 recovered under any of the Three Remaining Claims. Group C Members either (A)  
28 suffered no losses under any of Plaintiffs' theories of recovery or (B) are not Participants  
as defined in the Agreement because they did not have a vested benefit under the Signal  
Retirement Plan, or because their benefit was transferred to another pension plan, or  
because they died without a beneficiary before July 1, 2002, or whose surviving  
beneficiary died before July 1, 2002.

1 *Johnson, Alston & Hunt v. Graultry*, 886 F.2d 268, 271 (9th Cir. 1989), the Ninth Circuit  
2 stated:

3         Since the Supreme Court's 1885 decision in *Central Railroad & Banking*  
4         *Co. of Ga. v. Pettus*, 113 U.S. 116, 28 L. Ed. 915, 5 S. Ct. 387 (1885), it is  
5         well settled that the lawyer who creates a common fund is allowed an extra  
6         reward, beyond that which he has arranged with his client, so that he might  
7         share the wealth of those upon whom he has conferred a benefit.

8         *See also In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1300 (9th Cir.  
9         1994) (“those who benefit from the creation of the fund should share the wealth with the  
10         lawyers whose skill and effort helped create it.”). Common fund attorneys’ fees awards  
11         under ERISA and other similar statutes are well established in this Circuit and elsewhere.  
12         *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002) (ERISA case); *Staton v.*  
13         *Boeing Co.*, 327 F.3d 938, 967 (9th Cir. 2003); *In re Activision Sec. Litig.*, 723 F. Supp.  
14         1373, 1374-77(N.D. Cal. 1989) (collecting cases and describing benefits of the  
15         percentage of the common fund method over the lodestar method); *In re Omnivision*  
16         *Technologies, Inc.*, Nos. 04-2297, 2007 WL 4293467, \*8 (N.D. Cal. Dec. 6, 2007);  
17         *Berger v. Xerox Corp. Ret. Income Guar. Plan*, No. 00-584, 2004 WL 287902 (S.D. Ill.  
18         Jan. 22, 2004); *Local 56, United Food & Commer. Workers Union v. Campbell Soup Co.*,  
19         954 F. Supp. 1000, 1004 (D. N.J. 1997). *See also* Mark Berlind, “Attorney’s Fees under  
20         ERISA: When is an Award Appropriate?” 71 *Cornell L. Rev.* 1037, 1060-61 (1986)  
21         (“Applying the common benefit doctrine reflects the statute's purpose and enables  
22         qualifying potential plaintiffs, regardless of their financial status, to bring ERISA  
23         actions.”).

24         Class Counsel’s request for an award of 25% of the recovery is consistent with the  
25         Ninth Circuit’s rule that 25% is the appropriate benchmark for common fund fee awards:

26         the district court should take note that 25% has been a proper benchmark  
27         figure, which it can then adjust upward or downward to fit the individual  
28         circumstances of this case. Such an adjustment, however, must be  
29         accompanied by a reasonable explanation of why the benchmark is  
30         unreasonable under the circumstances.

31         *Paul, Johnson*, 886 F.2d at 273. *See also Staton*, 327 F.3d at 968 (“This circuit has  
32         established 25% of the common fund as a benchmark award for attorney fees.”) (citation

1 omitted); *Torrise v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1377 (9th Cir. 1993) (affirming  
2 25% fee of \$30 million common fund for “not only for the hours they had in the case to  
3 the date of the settlement, but for carrying the financial burden of the case, effectively  
4 prosecuting it and, by reason of their expert handling of the case, achieving a just  
5 settlement for the class.”); *Six Mexican Workers v. Arizona Citrus Growers*, 904 F.2d  
6 1301, 1311 (9th Cir. 1990) (affirming award of 25% of common fund).

7 In *Vizcaino*, 290 F.3d at 1047, the Ninth Circuit, analyzing “megafund” cases with  
8 settlements of \$50 million to \$200 million, affirmed an award of 28% of an  
9 approximately \$97 million common fund in an ERISA case. In common fund settlements  
10 of less than \$50 million, such as this one, courts have often awarded a higher percentage  
11 of the common fund as attorneys’ fees. *See, e.g., In re Pacific Enterprises Sec. Litig.*, 47  
12 F.3d 373, 379 (9th Cir. 1995) (affirming award equal to 33 percent of the common fund);  
13 *In re Ampicillin Antitrust Litig.*, 526 F. Supp. 494, 498 (D.D.C. 1981) (awarding 45% of  
14 \$7.3 million settlement fund).

15 In the ERISA context courts have generally awarded similar or higher percentages,  
16 than the percentage requested here. In *Vizcaino*, 290 F.3d 1043, in affirming an attorneys’  
17 fee award in an ERISA common fund case, the court relied on many of the same factors  
18 present here including:

19 the exceptional results achieved for the benefit of the class, *id.* at 1048;

20 the fact that “counsel pursued this case in the absence of supporting  
21 precedents... and against Microsoft’s vigorous opposition throughout  
the litigation,” *id.*;

22 the risks that counsel faced in pursuing the action, *id.*;

23 the fact that 28% was at or below the market rate, *id.*;

24 the fact that the litigation “entailed hundreds of thousands of dollars of  
25 expense, and required counsel to forego significant other work... *id.* at  
1050.

26 *See also Berger v. Xerox Corp. Ret. Income Guar. Plan*, 2004 WL 287902 (awarding a  
27 29% fee of a \$239 million dollar settlement fund plus \$ 300,000.00 in costs and expenses  
28

1 in an ERISA case, noting the fee award requested was “at or below the market rate for  
2 this and similar litigation”).

3 A lodestar cross-check also confirms that the requested fee is reasonable and  
4 appropriate. The lodestar is calculated by multiplying counsel’s reasonable hourly rates  
5 by the number of hours reasonably expended on the litigation. *D’Emanuele v.*  
6 *Montgomery Ward & Co., Inc.*, 904 F.2d 1379, 1383 (9th Cir. 1990). The declarations  
7 submitted in this case and those referenced in the Martin Decl. confirm that the requested  
8 fees are reasonable. *See* Martin Decl. ¶17, Exhibit 1 (Declaration of Ronald Dean) &  
9 Exhibit 2 (Declaration of Eli Gottesdiener); Declaration of Shaun Martin; Declaration of  
10 Peter Stris. *See also* declarations submitted in *Becker v. Western Conference of*  
11 *Teamsters*, No. CV 08-02130-PHX-FJM, Docs. 119-1 (Declaration of Ron Kilgard from  
12 the firm of Keller Rohrback in Phoenix, Arizona) ¶14; 119-2 (Declaration of Teresa  
13 Renaker from the firm of Lewis, Feinberg, Lee, Renaker & Jackson, P.C. in Oakland,  
14 CA) ¶7, 119-3 (Declaration of Edgar Pauk from New York, New York) ¶17 and 119-4  
15 (Declaration of Cassie Springer-Sullivan from the firm of Springer-Sullivan and Roberts  
16 in Oakland, CA) ) ¶4.

17 From November 1, 2007, (after the Partial Settlement Agreement was filed with  
18 the Court), through the filing of this motion, lodestar fees are \$4,354,928 which  
19 represents over 8,776 hours of time.<sup>2</sup> At current hourly rates, the lodestar multiplier will  
20 be only 1.279 solely based on work performed since October 31, 2007 through the final  
21 conclusion of this matter. This is well below the range the Ninth Circuit has found  
22 appropriate.<sup>3</sup> *See, e.g., Steiner v. American Broadcasting Co., Inc.* 2007 WL 2460326, at  
23

24 <sup>2</sup> In the fee application for the Partial Settlement, Plaintiffs submitted evidence  
25 concerning their lodestar multiplier only through October 1, 2007. As set forth in the  
26 Declaration of Susan Martin submitted herewith, the lodestar fees of \$4,354,928 are fees  
27 from the November 1, 2007 (following the Partial Settlement) through March 30, 2012.

28 <sup>3</sup> Class Counsel has submitted evidence that its rates are customary rates in Phoenix and  
nationwide. Because ERISA is a federal law and attorneys practice nationwide  
particularly in the area of pension law, national rates should also be used. *See, e.g.,*  
*Torgeson v. Unum Life Ins. Co. of Am.*, C05-3052-MWB, 2007 WL 433540 (N.D. Iowa  
Feb. 5, 2007) (use of national rate supported because “ERISA cases involve a national

1 \*2 (9th Cir. Aug. 29, 2007) (noting that lodestar multiplier of 6.85 “still falls well within  
2 the range of multipliers that courts have allowed”); *Vizcaino*, 290 F.3d at 1051 (Ninth  
3 Circuit affirmed fee award of 28% of common fund which resulted in lodestar multiplier  
4 of 3.65 and noted in Appendix, *id.* at 1052, that of 24 cases identifying multiplier, seven  
5 awarded multipliers of less than 2.0, eight awarded multipliers of between 2 and 3, and  
6 nine awarded multipliers greater than 3); *City of Roseville Employees' Ret. Sys. v. Micron*  
7 *Tech., Inc.*, 06-CV-85-WFD, 2011 WL 1882515 (D. Idaho Apr. 28, 2011) (lodestar  
8 multiplier of 2.72 “is relatively standard.”); *Thieriot v. Celtic Ins. Co.*, C-10-04462-LB,  
9 2011 WL 1522385 (N.D. Cal. Apr. 21, 2011) (awarding 33% of settlement fund as  
10 attorneys’ fees based on lodestar crosscheck which resulted in multiplier of 1.94, which  
11 was “within the customary range”); *In re Rite Aid Corp. Sec. Litig.*, 362 F. Supp. 2d 587  
12 (E.D. Pa. 2005) (25% of the settlement fund awarded, resulting in lodestar multiplier of  
13 6.96).

14 The fees requested by Class Counsel are also reasonable under the factors  
15 enumerated in Local Rule 54.2(c)(3) for the reasons explained above, which are briefly  
16 summarized below:

17 (A) The time and labor required by counsel: Class Counsel has worked on this  
18 matter for more than ten years. (Martin Decl. ¶ 9.) As set forth above and as detailed in  
19 the Martin Decl., following the Partial Settlement through the date of filing of this  
20 motion, Class Counsel spent over 8,776 hours working on this matter. This work  
21 included engaging in extensive discovery, working with experts on damages and the  
22 settlement, attempts to obtain discovery, litigating multiple summary judgment motions  
23

24 standard. Thus, attorneys practicing ERISA law tend to practice in a wide variety of  
25 districts.”) (citations omitted). *See also Mogck v. Unum Life Ins. Co. of Am.*, 289 F.  
26 Supp. 2d 1181, 1191 (S.D. Cal. 2003) (“It is appropriate to consider the declarations of  
27 attorneys in other jurisdictions because ERISA cases involve a national standard, and  
28 attorneys practicing ERISA law in the Ninth Circuit tend to practice in different districts.  
Furthermore, the Court observes that ERISA cases are often considered to be complex,  
ERISA plaintiff cases are often undesirable, and Plaintiff’s attorneys possess extensive  
experience in ERISA law.”); *Dobson v. Hartford Fin. Services Group, Inc.*, 3:99CV2256  
(JBA), 2002 WL 31094894 (D. Conn. Aug. 2, 2002).

1 and getting ready for trial through Rule 26(a)(3) disclosures. (Martin Decl. ¶ 16.)

2 (B) The novelty and difficulty of the questions presented: This case involves  
3 difficult issues related to technical and complex areas of ERISA including, by way of  
4 example, the scope and effect of the anti-cutback rule, the exact measuring point for  
5 determining when an accrued benefit is reduced and the manner of measuring a benefit  
6 offset all of which involved extensive research of Revenue Rulings, technical procedures  
7 and other Internal Revenue Service and Treasury guidance and significant work with the  
8 actuaries. Defendants argued, *inter alia*, that class members were not harmed because  
9 they received benefits at the time of retirement that were higher than the benefits they had  
10 accrued at the time of the amendment, that there were no anti-cutback violations, but at  
11 most administrative errors that affected only a very small number of class members and  
12 that the statute of limitations barred these claims which were based on amendments  
13 which purported to be effective as of January 1, 1984.

14 (C) The skill requisite to perform the legal service properly: Class Counsel is one  
15 of a small number of plaintiffs' attorneys who have the experience, skill and knowledge  
16 of ERISA and the Internal Revenue Code and applicable regulations and guidance who  
17 are willing to represent retirees on a contingency basis in this sort of pension case.  
18 (Martin Decl. ¶ 7 and Exhibit 1 (Declaration of Ronald Dean), at ¶¶ 10-14, and Exhibit 2,  
19 (Declaration of Eli Gottesdiener), at ¶¶ 6-7.) Defendants in this case include a large  
20 Fortune 500 company that retained four large law firms for the defense and were assisted  
21 by two additional law firms which, while not on the pleadings, were actively involved in  
22 several aspects of this dispute.

23 (D) The preclusion of other employment: As set forth in the Martin Decl. ¶ 19,  
24 Martin & Bonnett is a small firm and can handle only a limited number of cases at any  
25 one time. The prosecution of this case was risky and occupied a significant part of  
26 Martin & Bonnett's caseload for many years. All of the firm's attorneys were often called  
27 upon to work on the case. The case was a significant factor and resulted in turning down  
28

1 cases that Martin & Bonnett might otherwise have taken. (*Id.*)

2 (E) The customary fee charged in matters of the type involved: As set forth herein,  
3 25% of the common fund is the benchmark in this Circuit and the lodestar crosscheck of  
4 \$4,354,928 is based on hourly rates that are clearly comparable to the rates of attorneys  
5 with comparable ERISA pension class action litigation experience.

6 (F) Whether the fee contracted between the attorney and the client is fixed or  
7 contingent: The retainer agreements between Class Counsel and the named Plaintiffs as  
8 well as hundreds of other class members provided that Class Counsel was to receive the  
9 greater of the attorneys' fees awarded by the Court or 33.3% of the total recovery and a  
10 higher percentage of the total recovery in the event of an appeal. (Doc. 385 ¶ 10.) Class  
11 Counsel's attorneys' fee application represents a downward adjustment to its contingency  
12 fee agreement.

13 (G) Any time limitations imposed by the client or the circumstances: Most of the  
14 class members are retirees who are on fixed incomes. This case could take years to  
15 achieve any further result. The Rule 26(a)(3) disclosures disclosed hundreds of potential  
16 witnesses and thousands of documents to be used at trial. The excellent results achieved  
17 at this time without trial and appeal through Class Counsel's efforts are significant and  
18 the time value of the Settlement will greatly benefit the retiree class.

19 (H) The amount of money, or the value of the rights involved, and the results  
20 obtained: In this case, Class Counsel's efforts helped to create a settlement fund of  
21 \$23,000,000 in the Final Settlement in addition to the amounts obtained in the Partial  
22 Settlement. Class Counsel's actuary estimated that the value of the losses to the class  
23 would be approximately \$29.3 million under a "net effect" analysis. This is a substantial  
24 result for the class members.

25 (I) The experience, reputation and ability of counsel. As set forth in the  
26 Declarations attached to and referenced in the Martin Decl. ¶¶ 7, 17, Class Counsel are  
27 experienced and knowledgeable ERISA attorneys with an excellent reputation. The  
28

1 results in this case also establish that Class Counsel performed ably in achieving the Final  
2 Settlement.

3 (J) The “undesirability” of the case: This case was “undesirable” because of the  
4 fact that the case stemmed from amendments that were purportedly effective as of  
5 January 1, 1984 and complex ERISA principles. The case was further undesirable  
6 because of the risk involved, the large size of the class which would make an early  
7 settlement difficult and the costs and expenses of litigation. The records offered by  
8 Defendants also reveal that some class members had in fact been turned down by other  
9 attorneys. Given the degree of “undesirability,” and the significant risks and challenges  
10 undertaken, a 25% fee award from the common fund plus costs to be paid by Defendants  
11 is reasonable.

12 (K) The nature and length of the professional relationship between the attorney  
13 and client: Class Counsel undertook this case, although it had no prior agreement with  
14 the named Plaintiffs and agreed to do so on a contingency basis. Class Counsel worked  
15 on this matter for more than ten years. Plaintiffs filed administrative claims in 2002 and  
16 the administrative appeal was decided in 2003. Litigation commenced more than eight  
17 years ago in March 2004.

18 (L) Awards in similar actions: The Ninth Circuit has held that 25% is the  
19 benchmark in common fund actions and has affirmed or awarded more than this amount  
20 in similar cases. Given the type of case and the fund created when compared to similar  
21 cases, 25% is a reasonable award.

22 **B. Class Counsel’s Request for Costs to Be Paid by Defendants is Appropriate**

23 Pursuant to the terms of the Final Settlement, Plaintiffs also seek approval for  
24 payment of \$800,000 for costs and expenses to be paid directly by Defendants,  
25 independent of the \$23 million common benefit fund, for the costs and expenses incurred  
26 in prosecuting this action. (See Doc. 738-1, at Section 2.08.) This case was extremely  
27 expensive to prosecute. As set forth in the Martin Decl. ¶ 20, to date, the expenses  
28 incurred in this litigation total over \$1,154,012. The costs and expenses following the

1 Partial Settlement alone will likely exceed the \$800,000 that Defendants agreed to pay in  
2 the Final Settlement Agreement. More than \$771,973 in costs and expenses have been  
3 incurred to date since the Partial Settlement. There will be additional costs and expenses  
4 incurred by Class Counsel including significant additional expenses for the actuary and  
5 claims administrator.

6 Class Counsel is also planning to refund \$285,083.41 in costs paid by the Garrett  
7 Retirees Action Committee during this litigation along with other costs borne by the  
8 Committee for communicating with class members (including hosting and updating a  
9 website that kept class members advised of the status of the lawsuit and updates to class  
10 members who did not have email). Class Counsel also intends to reimburse the  
11 Committee for the expenses that will be incurred by the Committee in refunding amounts  
12 that were paid to the Committee by Class Members to help fund the litigation expenses.

13 **CONCLUSION**

14 For the foregoing reasons, Plaintiffs respectfully request that the motion for  
15 attorneys' fees, costs be granted and that the Court award attorneys fees in the amount of  
16 \$5,750,000 (25% of the Settlement Fund) plus costs and expenses in the amount of  
17 \$800,000 to be paid directly by the Defendants, independent of the \$23 million  
18 Settlement Fund, pursuant to Section 2.08 of the Final Settlement Agreement.

19 Respectfully submitted this 30<sup>th</sup> day of March, 2012.

20  
21 **MARTIN & BONNETT, P.L.L.C.**

22 By: s/Susan Martin  
23 Susan Martin  
24 Daniel L. Bonnett  
25 Jennifer L. Kroll  
26 1850 N. Central Ave. Suite 2010  
27 Phoenix, AZ 85004  
28 (602) 240-6900

Attorneys for Plaintiffs

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

I hereby certify that on March 30, 2012, I electronically transmitted the attached document to the Clerk’s Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to all CM/ECF registrants.

David B. Rosenbaum  
Dawn L. Dauphine  
Osborn Maledon, P.A.  
2929 North Central Ave., Suite 2100  
Phoenix, AZ 85012-2794

Michael Banks  
Morgan Lewis & Bockius LLP  
1701 Market Street  
Philadelphia, PA 19103

Howard Shapiro  
Robert W. Rachal  
Stacey Cerrone  
Bridgit DePietto  
Proskauer Rose LLP  
650 Poydras Street, Suite 1800  
New Orleans, LA 70112-4017

Amy Covert  
Proskauer Rose LLP  
Eleven Times Square  
New York, NY 10036-8299  
Telephone: (973) 274-3258

Craig Primis  
Michael Williams  
Kirkland & Ellis LLP  
655 Fifteenth Street, N.W.  
Washington, D.C. 20005

Attorneys for the Defendants

s/J. Kroll