

## Blog Entry: The Fresh Scent of Clean Laundry

NOVEMBER 11, 2016

*Source: Array*

Our planet is plagued by many vexing problems. For some folks, front-loading washing machines was one of them. They claimed that certain front-loading washers manufactured by Whirlpool were defective. They contended those machines suffered from what they called the “Biofilm defect,” which caused mold and mildew to grow inside them. That, in turn, allegedly caused moldy odor to permeate their homes and clothes. And that, in turn, spawned eight years of litigation in the Northern District of Ohio.

That litigation ended in late September this year when the court granted the parties’ Joint Motion for Final Approval of Class Action Settlement, and Class Counsel’s Motion for an Award of Attorney’s Fees and Costs and For Class Representative Service Awards.

The path from start to finish was anything but flat. Initially, the court certified a class defined as “[a]ll persons who are current residents of Ohio and purchased a Washing Machine (defined as Whirlpool Duet®, Duet HT®, and Duet Sport® Front-Loading Automatic Washers) for primarily personal, family or household purposes, and not for resale, in Ohio...” The Sixth Circuit twice affirmed class certification. A load of discovery ensued:

Before and after class certification, the parties engaged in extensive discovery. Class Counsel reviewed more than one million pages of documents, and deposed more than two dozen key Whirlpool personnel. Whirlpool deposed 18 Class Representatives and inspected the washing machines of dozens of Class Representatives. Between them, the parties employed more than 20 testifying experts, nearly all of whom were subject to multiple depositions.

A bellwether trial then took place and after a three and-a-half week trial, the jury returned a defense verdict after deliberating two hours. But appeals and cross-appeals followed, and while awaiting the Sixth Circuit’s ruling, the parties decided to settle.

A settlement class was then preliminarily certified by the court consisting, with certain exclusions, of “[a]ll residents of the United States and its territories who (a) purchased a new Class Washer, (b) acquired a Class Washer as part of the purchase or remodel of a home, or (c) received as a gift a new Class Washer not used by the donor or by anyone else after the donor purchased the Class Washer and before the donor gave the Class Washer to the Class Member.” Final class certification and approval of the settlement agreement occurred on September 23, 2016. Seventy-two objections to the settlement were filed, 71 of them by *pro se* objectors. All were overruled.

Under the settlement, class members are to receive these benefits:

The Settlement Agreement provides to class members two tiers of benefits, depending on whether they actually experienced mold problems with their washer. Class members who attest under oath

they did “experience[] persistent bad odors and/or mold growth problems” within five years of purchasing a Class Washer have three choices. They may file a claim for:

- A \$50 cash payment; or
- A 20% rebate “off the best negotiated retail purchase price” of certain new washers or dryers; or
- Up to \$500 in reimbursement of documented, out-of-pocket expenses to service or replace a Class Washer because of mold problems.

Class members who did not experience a mold problem within five years of purchase may file a claim for a 5% rebate “off the best negotiated retail purchase price” of certain new washers or dryers.

Class members, in turn, agreed to release defendants but carved out certain claims, including those for personal injury, emotional distress, and damage to property other than washers. The 29 class representatives who were deposed, or had their washers inspected by a defense expert, would each receive \$4,000 incentive awards, and the other 7 class representatives would \$1,000 incentive awards.

As for attorneys’ fees and costs? \$6,723,432.66 for fees, \$8,026,567.34 for costs. In finding that fee award reasonable, the court noted that class counsel handled the case on a “purely contingent basis” and that they calculated their lodestar at more than \$33 million and filed, under seal, time logs from five law firms accounting for some \$22 million of that amount. And regarding costs, the court stated that “[i]t suffices to say that the expenses identified for reimbursement here - above all, more than \$5 million in expert fees - are reasonable and described with adequate particularity.”

The court’s opinion is encyclopedic. Those interested in the mechanics of class action settlements would be well advised to read it. The case is *In re: Whirlpool Corp. Front-Loading Washer Products Liability Litigation*, United States District Court, Northern District of Ohio, MDL 2001, Case No. 1:08-WP-65000.