UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE 09-02036-MDL-KING

IN RE: CHECKING ACCOUNT
OVERDRAFT LITIGATION

MDL. NO. 2036

MIAMI, FLORIDA
DECEMBER 10, 2012

TRANSCRIPT OF FINAL APPROVAL HEARING
[JP Morgan Chase Bank]
BEFORE THE HONORABLE JAMES LAWRENCE KING
SENIOR UNITED STATES DISTRICT JUDGE

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THE COURT: We have scheduled for hearing this morning the final approval of the matter of the checking account case, 09-MD-2036-King, involving JP Morgan Chase Bank overdraft litigation.

We have an agenda that indicates that Mr. Podhurst and Mr. Gilbert are going to be presenting.

MR. PODHURST: Good morning, Your Honor.

Judge King, we are going to follow the same procedure. Mr. Gilbert is going to handle the reasonableness of the settlement. I am going to follow after Mr. Homer, and I am going to follow on the fee issue.

We have at the table Professor Rogow, who has a hearing and may have to leave because he's got to get up to West Palm Beach. Mr. Grossman and Mr. Gilbert will lead off, and then I will follow. Thank you, Your Honor.

THE COURT: Fine. Thank you.

MR. GILBERT: Good morning, Your Honor. May it please the Court. Robert Gilbert on behalf of the plaintiffs and the settlement class.

Your Honor, we are pleased to be before you this morning to seek final approval of the settlement that has been reached with JP Morgan Chase Bank. I will be referring to it as Chase. It is a total value of $162 million.

Of that amount, $110 million in cash has already been deposited into the escrow account. The additional $52 million

is made up of future savings, which settlement class members will reap over the next two years, slightly less than two years, based on a change in practice that Chase adopted and implemented as consideration for this settlement, and I will explain it in just a moment.

The settlement that we are presenting to the Court this morning, Your Honor, comes following hard fought, lengthy detailed litigation, as the Court is well aware, of well over two years.

We are extremely proud of this settlement. Many members of our team are here and many members are not. The $162 million total value of the settlement represents approximately 20 percent of the most probable damages that plaintiffs, the class, could have expected to recover, assuming that everything went our way in this Court and the Appellate Courts through final judgment and on a plenary appeal.

The recovery in our case represents -- Brian Fitzpatrick of Vanderbilt University, one of our experts, described it as impressive in view of the significant legal obstacles that we faced in this litigation.

I will speak of those obstacles. The Court arbitration based on the Concepcion arbitration, federal preemption, nationwide class certification, and others, the account agreement itself. It is, indeed, safe to say that, absent this settlement, the litigation would have continued in

this court, in the Eleventh Circuit, and perhaps even all the way up to the Supreme Court of the United States for the next couple of years.

Now, instead, based on our settlement, in lieu of those litigation risks and delays, our clients, who consist of over 5.3 million settlement class members, current and former customers of Chase, will receive immediate tangible relief from the settlement.

Although I'm sure Your Honor is well aware of the details in the papers, I want to review a couple of them that related to matters taken place since May 24th when the Court entered the preliminary order.

First, Your Honor entered the preliminary order at docket entry 2012. Good faith arm's length negotiations between the parties and their capable and experienced counsel is within the range of reasonableness and should be preliminarily approved.

You also found at that time, in that order, that the proposed notice plan and the proposed forms of notice and the proposed claim form satisfied Rule 23 and constitutional due process requirements.

Pursuant to that order, Your Honor, the Court directed the parties and Notice Administrator to provide notice to the settlement class of the terms of the settlement and of settlement class members' rights to opt out of settlement or

object to the settlement or any portions thereof, including the fee petition of class counsel.

Your preliminary approval order set strict deadlines within which those actions had to be taken and within which class counsel would file papers relating to final approval.

Notice was given to the settlement class in four different ways; postcard mailed notice to over 5.3 million settlement class members, published notice in People Magazine and Better Homes and Garden, the long form detail notice that was posted on the settlement website, and last, but not least, web advertising.

As I said, individual postcards were mailed to over 5.3 million current and former Chase customers for whom the bank had current or recent addresses. Out of those 5.3 million postcards, approximately ten percent were returned undeliverable, and the Notice Administrator was able to obtain updated addresses and remail 429,000 of those to settlement class members.

Based on the input received from the settlement administrator, the postcards reached approximately 96 percent of the identified settlement class members.

As I said a moment ago, notice was also published one time in Better Homes and Gardens magazine as well as People magazine, and Internet advertising that appeared on the AOL media network and the Yahoo network also gave widespread notice

of the settlement to millions of people with access to the Internet.

A long form notice was posted on the website, which has been in continuous operation since August 6th of this year.

The settlement administrator advised us of over 40,000 unique visitors to the settlement website. Those members who visited the website have been able to view copies of the long form notice, the settlement agreement, the Court-approved claim form, the preliminary approval order, and a list of frequently asked questions and answers, among other things.

In addition, the administrator set up a toll free number that has been in continuous operation since July 31st of this year so that all settlement class members could dial into a toll free number and listen to frequently asked questions and answers and request that a copy of the long form notice and/or the claim form be sent to them.

The administrator advised us that over 110,000 calls have been placed to the toll free number and that callers have requested over 59,000 claim forms be mailed to them.

Based on the information that I've just summarized, all of which is in our papers in one form or another, Your Honor, there's no doubt that the Court-approved forms effectively reached the overwhelming majority of settlement class members and provided them with the required information in order to allow settlement class members to make educated,

well-informed, conscious decisions about whether or not to remain in the settlement class and accept the benefits that are being provided under the settlement, to object to the settlement or portions thereof, or to opt out and exclude themselves from the settlement and, thereby, not receive any of the settlement benefits and not be bound by the final approval order and judgment.

I'm pleased to report that, out of 5.3 million class members that were noticed, we've only received 164 timely opt out requests for exclusion. That's 164 timely opt out requests for exclusion.

In addition, we received six timely objections from settlement class members. Five of those were actually filed on the ECF up through today. I have their docket numbers. One of them has not yet been filed on the ECF system, but it was timely submitted to us and to the other side, and we are aware of it.

I'm also pleased to report to the Court that all six of those, the objectors who filed them, have filed notices of withdrawal of their objections asking the Court to grant their request to withdraw their objections in their entirety.

Those withdrawal notices are found at docket entry numbers 3099, 3101, 3102, 3103, and 3104. A withdrawal notice, among those that I just identified, 3082 -- I'm not sure I mentioned it -- 3082, which is the first one filed, is the

notice of withdrawal by the objector whose objection has not yet been filed on ECF.

All of the settlement class members who timely lodged objections to the settlement, or portions thereof, have subsequently filed notices of withdrawal of their objections and report to the Court that there are no objections to the settlement as of this morning.

In mid-October we filed our motion for final approval, our request for service awards for the 15 named plaintiffs, and class counsels' fee application. With that motion, as the Court is undoubtedly aware, we also filed a copy of the settlement agreement, the joint declaration of Mr. Podhurst, Professor Rogow, myself, providing a detailed description of the litigation and the settlement process.

We also filed the expert declaration of Brian Fitzpatrick, who expressed opinions both as to the fairness, adequacy, and reasonableness of the settlement as well as with respect to class counsels' fee petition, which Mr. Podhurst will address in a few moments.

Professor Fitzpatrick opined, Your Honor, that the settlement is not only fair, adequate, and reasonable for settlement class members in light of substantial risks and uncertainties that we faced in this litigation, but he described the settlement, as I said earlier, as impressive in light of the legal hurdles that we faced.

We also filed, together with our motion, the expert declaration of Arthur Olson, our damages expert, who performed the data extraction and calculations using Chase data.

Among other things, Mr. Olson did the work that ultimately led to the identification of all current and former Chase account holders for whom the bank had sufficient data. He performed individualized analysis for each of the 5.3 million plus settlement class members to determine who suffered harm under our theory of the case and the amount of each settlement member's damages.

We also filed two declarations from the Settlement and Notice Administrator, Doctor Shannon Wheatman, concerning adequacy of the notices and the notice program, and Mr. Joel Botzet attesting the implementation of the notice program as I just described it for the Court.

Finally, we filed the expert declaration of former District Judge Thomas Scott regarding the fee application that Mr. Podhurst will address later on this morning.

Your Honor, you have previously granted final approval to several of the cases in MDL 2036. It's safe to say that each one of these cases has its own unique procedural and substantive history. This one is no different.

I would like to take a couple minutes before I sit down to highlight a couple of the unique issues in this litigation involving Chase that led to this settlement, or

preceded this settlement, as well as a new aspect of the settlement process that we sufficiently addressed with Chase and its counsel in the settlement before the Court today.

First, as far as the litigation history is concerned, Your Honor will recall that Chase was part of the first tranche that took shape in the fall of 2009, shortly after the judicial panel on multi-district litigation appointed Your Honor to preside over this MDL proceeding.

In May of 2010, after the Court denied the omnibus motion to dismiss, which included the omnibus motion by Chase as well as supplemental motions, and the Court opened discovery, Chase, unlike most of the other first tranche defendants, first attempted to invoke arbitration against some of the named plaintiffs in the litigation.

In the summer of 2010, this Court denied Chase's initial arbitration motion, and Chase immediately appealed to the Eleventh Circuit. That appeal was briefed and pending argument when the Supreme Court of the United States issued the Concepcion decision in late April 2011.

The Concepcion decision added another legal obstacle to this litigation that did not previously exist in our view. Chase moved again to compel arbitration against the remaining plaintiffs a year after we had embarked on discovery, after we had taken about a dozen lengthy depositions, after we had reviewed over 800,000 pages of documents, and after we filed

our motion for class certification.

Also, in light of Concepcion, the Eleventh Circuit reversed the Court's original order denying Chase's motion for arbitration and remanded the decision back to this Court for consideration of the impact of Concepcion on the case.

Both sides, Chase and we, were involved in arbitration discovery that was authorized by this Court and arbitration related briefing when the parties resumed settlement discussions in the fall of 2011. We ultimately reached an agreement on the outlines for settlement.

I mentioned the arbitration related proceedings to the Court because in our view, on behalf of settlement class members, the arbitration related issues in this case had an enormous impact on the parties' settlement positions in addition to all the other litigation related issues that Your Honor has previously heard us discuss during other settlement approval hearings.

As the Court may know from reading the papers, the parties actually participated in two lengthy mediation sessions, neither which were successful, direct settlement discussions, and participated in the settlement discussions in the fall of 2011.

This was, as I said early on, a very hard fought case. We faced and confronted one of the most powerful companies in the world. Chase was represented by some of the finest lawyers

in this country who represent their clients' interest zealously and professionally.

Let me address now the other issue, which are two aspects of the settlement that have not previously come up during prior final approval hearings.

First, I would like to discuss the portion that discusses Chase's newly implemented practice, the $52 million in savings to settlement class members over the next two years.

First, I want to point out that we would not have entered into this settlement without this component as part of the settlement. As I mentioned earlier, in addition to the $110 million in cash, Chase agreed, as part of the settlement, to implement this new practice that it had previously contemplated back in 2009, but at that time decided not to adopt.

The new practice involves not charging overdraft fees to Chase customers whose debit card transactions of $5 or less put them into an overdraft status.

In other words, if somebody goes to Starbucks or Duncan Donuts and buys a cup of coffee and a donut, and their balance is $5 or less, in that transaction Chase has agreed, for a minimum of two years, to not charge any overdraft fees on that type of transaction.

That is what Professor Rogow discussed in March of 2010 as the proverbial $38 cup of coffee. With the change that

Chase has adopted, the proverbial $38 cup of coffee has been eliminated for two years.

Chase provided us -- so that we could determine how much of this implementation of this new policy under our settlement agreement, Chase adopted this new policy in mid July of this year shortly after the Court's preliminary order. Under the terms of the settlement, the new practice will continue until sometime in mid July of 2014 at a minimum.

Chase provided us with information so that we could determine how much its adoption and implementation of this new policy would benefit settlement class members. The information we analyzed -- and it was analyzed by our expert.

Mr. Olson included the actual amount of overdraft fees that these settlement class members incurred on small transactions of $5 and less during the months immediately preceding July 2012 when Chase implemented this new policy.

Mr. Olson's review of that data led him to conclude, and set forth in his declaration, that Chase's implementation of this new policy will result in actual savings over the minimum two-year period of the program.

Obviously, if Chase chooses to keep the program in place for longer than two years, the savings will only increase.

In addition to benefiting settlement class members who we represent in this litigation, these savings are also

benefiting every other consumer account holder of Chase who have opted in under Regulation E to the overdraft program and may engage in transactions with their debit cards that are $5 or less.

In other words, if somebody is a Chase customer, even though they are not covered, a Chase consumer customer being engaged in a debit card transaction of $5 or less, he or she will not be charged an overdraft fee on that transaction.

The second part of the settlement that has not previously come up to the Court that I would like to explain is something we believe is beneficial as well for the settlement class members.

Your Honor may recall when we appeared before you in the fall of 2011 in the Bank of America settlement. There was discussion and information that was provided to the Court that a very small segment of the Bank of America customer base that was covered by the settlement in 2001 and 2002 were not readily identifiable from Bank of America's records, and consequently, our expert, Mr. Olson, could not automatically calculate the damages for those settlement class members.

As a result, in Bank of America, we agreed with Bank of America, and the Court approved, that 12 and a half percent of the net settlement proceeds in that case would be directed to nonprofits and charitable organizations that participate in the area of financial literacy and consumer financial literacy

and education.

That meant that a certain amount of money, approximately $30 million, is going to go to those organizations, not into the hands of the class members from 2001 and 2002 because they could not be readily identified and have their damages calculated.

As part of this settlement, we chose to pursue a different road. Chase, like Bank of America and like most other banks, has certain segments of its settlement class member database for whom they do not have sufficient electronic data so that our expert, Mr. Olson, can identify these people and, in a computerized fashion, calculate their damages through the bank's database.

Rather than allocate a percentage of the net settlement funding to consumer financial literacy programs, working together with Chase and its counsel, we agreed to incorporate into this settlement a claim settlement program so that settlement class members from Chase, former account holders for the 2003 and 2004 period principally, and a very small customer component in 2006 and 2007 will have the opportunity to submit claim forms to the settlement administrator indicating that they believe they were charged additional overdraft fees as a result of the practices that we challenge in this litigation, what the Court refers to as debit resequencing and what the settlement refers to in this case as

high-to-low posting, whose damages are not being automatically calculated here due to the absence of sufficient data, have the opportunity to request a claim form, to fill it out, to include all of the relevant information regarding their overdraft fee activity during the 2003, 2004 time-frame, and to submit it to the settlement administrator, an independent party who will review, and verify, and validate the claims that come in.

If those claims are verified and validated, those settlement class members will receive their pro rata from the net settlement proceeds the same way that all of the settlement class members from 2005 forward will receive their's through an automated distribution.

We believe that the addition of this feature, while it requires the class members from 2003 and 2004 to do a little bit of work on their own, enhances the class settlement because it gives those individuals from the earliest portion of the class period the opportunity to apply for and receive some portion of the net settlement proceeds rather than directing those funds to nonprofits or charitable organizations as we did previously.

Finally, Your Honor, in connection with my presentation on final approval, we have requested that the Court approve service awards of $5,000 each for each of the 15 named plaintiffs who served as named plaintiffs in this case and who worked closely with class counsel, with us, throughout

the litigation. That is addressed in paragraph 128 of the settlement agreement.

Your Honor, based on class counsel that take our roles very seriously, we are pleased and proud to request the Court to recommend the settlement involving Chase. Should the Court grant final approval, we will finalize and promptly submit a proposed final approval order.

A draft was attached to our motion. It can be updated very quickly with Chase's counsel, very quickly, and submitted to the Court within a couple of days at the longest.

Finally, unless the Court has any questions for me, I'm going to turn the microphone over to Mr. Homer or Mr. Lesser, and then Mr. Podhurst will address the fees.

THE COURT: Thank you, Mr. Gilbert.

MR. HOMER: Good morning, Your Honor. Peter Homer on behalf of JP Morgan Chase. Mr. Lesser is here with me. I will be brief.

As you know, and Mr. Gilbert has recounted this morning, the litigation in this case on behalf of my client with the plaintiffs has been very vigorous.

When it came to the settlement issues in this case and negotiations, they were done at arm's length. They also were done over an extended period of time and very, very vigorous.

Mr. Gilbert has correctly described it. There is, in fact, an enhancement in this settlement over the one which was

agreed to and approved by the Court with respect to Bank of America in terms of dealing with those absent class members who were not able to be easily identified.

Your Honor, there were, in addition, some objections which were filed in this matter. I came prepared to address those. Those have all been withdrawn at this point. I'm not sure there are any real questions which I need to answer.

If Your Honor has any questions about anything, I would be happy to answer those. If not, I would sit down and bid you farewell in this case and hope to see you again soon in another matter.

THE COURT: I think that covers it, except, Mr. Homer, I know that because of my involvement in a trial in Key West last week, I had asked counsel to see if they could work out a delay of this hearing from last Thursday or Friday until today. I have the right case, don't I, Mr. Gilbert?

MR. GILBERT: No, Your Honor. That's the next one.

THE COURT: I was about to say that I know one of the case's counsel, I didn't know if it was Mr. Lesser or not, one counsel is coming from California, had to make a lot of changes, but did accommodate the Court to change and shift a hearing so I could complete that other trial in Key West, or attempt to complete that other trial.

I was about to say -- I was going to thank you and Mr. Lesser for working that out, but I have the wrong case.

That was the other case that had to be shifted that was also a final adjudication.

Thank you, Mr. Homer.

Does Mr. Lesser wish to add anything?

MR. LESSER: No, Your Honor.

THE COURT: Mr. Podhurst?

MR. PODHURST: Thank you.

Your Honor, I would like to start out by saying I'm not foolish enough to believe that you haven't heard what I'm about to say in other cases as to the law applicable. There is a record. We take nothing for granted.

I will be brief, but I would like to discuss why the plaintiffs feel that a fee of 30 percent of the $162 million is reasonable and Your Honor should exercise your discretion to grant it.

Your Honor, I would say that, as a lawyer, I have a good background on complicated class action cases. I had the privilege of spending ten years in front of Judge Moreno in the health care cases. They were complicated. There were many, many parties, actually more than here, but there's nothing more complicated than a bank overdraft case, in my opinion.

I have spent most of my professional life in the last two years trying to make sure that the plaintiffs try to work as a team. To some extent, what you don't hear from the plaintiffs is it takes as much time as -- what you don't hear

from the plaintiffs is what we don't do and shouldn't do.

The case is complicated because it's got many serious issues. I would say the Morgan Chase case is the most complicated, and we are proud to say that we have reached a settlement. The issues are formidable.

Your Honor will recall there are three basic defenses.

One, that the documents allow for the high-to-low, and they can do what their documents allow them to do.

The second was the question of the National Banking Act, what is basically known as preemption. Your Honor is probably aware that that is in front of the Ninth Circuit in the Gutierrez case and is about the most substantial issue in that appeal being taken by Wells.

While we believe we are right on issue number one, and the issue of preemption is certainly, as anybody would say, a risk that even if the Ninth Circuit affirms, which we hope they will, that they will try to go to the Supreme Court.

The third defense here was the one that, at least speaking for myself and most of my colleagues, was the most troublesome, and that was the arbitration issues and the subsequent case that came down, which we all know, Concepcion.

For anybody to not conclude that this is a serious defense and that we, as plaintiffs for our clients, need to do everything in our power to settle this matter would be a mistake because that's what plaintiff's executive committee and

the plaintiffs ought to do.

I'm happy to say, after maybe a year of totally going nowhere in our talks, like Peter and his paper route, but we got nowhere for such a long time because we sincerely disagreed on the issues.

We were able to come back, and we actually settled this matter after mediation in Chicago with members of the defense attorneys and the client in Chicago after several visits, and I'm happy to say, as difficult as I think it was, both sides made the right decision.

With regard to the attorneys' fees, Your Honor, I know it's discretionary, but I can honestly look to you and say if there's any case that deserves a 30 percent fee across the board, it's this one. It was that fully litigated.

I'm not going to go into the details of Camden One and Johnson v. Georgia Highway case because I think I have discussed that as a lawyer with you in cases if not a dozen times, a lot of times. I know you're fully aware of Camden One, and that you're fully aware of the issues that are involved.

I briefly would say to you that the Eleventh Circuit has, of course, approved the common fund and a percentage of the common fund. The Eleventh Circuit has, many times, said that cases, approximately 25 percent, 20 to 30 percent, they've approved 35 percent, all of this within the discretion of the

Court.

I don't take for granted that it is within the discretion of the Court. I know that. I also feels this case deserves it.

In Camden One we talked about the factors that were involved. In Johnson, the time that is involved, the difficulty of the issues. We talked about the kinds of opponents you have, the labor required, the novelty of the questions.

As far as novelty, I think the issues in this case are as novel as any. Concepcion, I think it did require a skill from both the plaintiffs and the defendants to handle this case. Your Honor knows the reputability of all of the other attorneys in this case on the plaintiff's side and the professionalism that was needed.

Perhaps the seminal view of what is an appropriate percentage in a class action case is done by Professor Fitzpatrick, which has been submitted to you by affidavit. He ironically clerked for Judge Scalia and has done more work on class actions and empirical studies.

He has concluded that this fee is not only warranted, but really appropriate when taking everything into consideration.

We're happy about the injunctive part of this case. We need to do more of that if we can because it prevents

litigation. It stops things from occurring which will occur in the future, which people will object to and be back in front of Judge King or some other Judge and be litigating again. Where you can do it, this is as important as cash.

Your Honor, I want to mention a couple of other things that are small, but they're important. We have, in this settlement, $3 million in administrative and notice costs, which we're not asking for a fee, which the defendant is paying. That's good for the class.

If you take that $3 million, it's less than 30 percent. It's an important factor.

During this case, we reviewed over 800,000 pages of documents. We deposed 12 Chase former employees and others. We defended all of the plaintiffs' depositions. We spent a great deal of time with great many lawyers to get to this point.

We're not asking for all of our costs. Most of our costs are internal for travel and all of that stuff. We're asking for $309,326.50 to be reimbursed to us, which included $245,846.15 for experts, including Mr. Olson, $51,231.49 for Court Reporter fees, and $12,248.86 for mediator fees.

In other words, third party costs only, not the hundreds and hundreds and hundreds of thousands spent by the plaintiffs in this case to litigate.

We think those costs were necessary, Your Honor. We

needed our experts. We needed our Court Reporter transcripts, and we needed to go through mediation. While mediation failed, it probably set us up to get together to do what we eventually did by going through the issues many times.

Unless Your Honor has any questions, I would ask Your Honor to approve the 30 percent fee, which comes to $48.6 million. I would ask Your Honor to reimburse the costs of $309,326.50.

If Your Honor has any questions, I would be happy to answer them. Otherwise, I have completed my presentation.

THE COURT: What did you say the mediator's fee was?

MR. PODHURST: The mediator fee was $12,248.86.

THE COURT: And your first?

MR. PODHURST: $245,846.15 for the experts and $51,231.49 for Court Reporters.

The total of three, the total asked for reimbursement, is $309,326.50.

THE COURT: Now, you're including in this the new element of future savings and future benefit to the class members who are customers or clients of Chase over a two-year period?

MR. PODHURST: Yes, Your Honor.

THE COURT: That you suggest is a value of $52 million; is that correct?

MR. PODHURST: Yes, Your Honor. Otherwise, you would

deter plaintiff's lawyers from going out and trying to get what I call noncash relief for its class, which have the future benefits to the class and to do the things that ought to be done. That discussion with Professor Fitzpatrick is in his affidavit submitted with our papers.

THE COURT: There's no question, but it's an extreme benefit, and it's very worthy and very desirable and very commendable that the lawyers considered that aspect and dealt with it in an exemplary fashion.

You referred to a case. Has there been prior consideration of the aspect of the attorneys' fee award for such a benefit to the class? You did refer to a case, and you said it's in your memorandum?

MR. PODHURST: Very briefly, Your Honor. On page 17 of Professor Fitzpatrick's affidavit he mentioned the case, Staton v. The Boeing Company, 327 F.3d 938, Ninth Circuit, 203 at page 946. It discusses the fact that counsel obtains injunctive relief in addition to monetary relief.

He also cites in there Faught v. American Home Shield Corporation, reported at 668 F.3d 1233 at 1243, which is the Eleventh Circuit 2012, affirming a fee award of $1.5 million plus 25 percent of the cash recovery, which is the showing for nonmonetary relief.

He says that the Staton case, which is the lead case, basically, says where the value can be ascertained, this is the

proper thing to do.

He cites the American Law Institute, which is in that affidavit at the same page, a percentage of the fund approach, the method utilized in these cases with a percentage being based on both the monetary and the nonmonetary value of the judgment or settlement.

He says it's reasonable and important to approach this case to award class counsel a percentage of both the cash and noncash portions of the settlement because it is believed that the valuation of the changed practices here is most reliable.

Not only did the information for this valuation come directly from Chase, but it's based on an analysis of actual overdraft fees incurred by settlement class members on debit card transactions of $5 or less during the three-month period immediately before the practice change was implemented, and he sites the Olson declaration and the Chase joint declaration at page 44.

This valuation was confirmed by a cost analysis Chase did in 2009 of the very same practice change. This is important, Your Honor. "In 2009, Chase considered foregoing overdraft fees on debit card transactions of $5 or less for internal business reasons, but decided not to do so after finding it could cost up to $211 million annually in lost revenue or up to $422 million over two years."

That's very important as to what we've been able to

accomplish not only for our class, but for other Chase members. The 2009 figure is greater than the figure we estimate today because they started to eliminate certain practices after this lawsuit was filed.

Your Honor, Professor Fitzpatrick goes on and talks about the empirical study and says that it ought to be 30 percent of both.

Then he gets into another part, which is not relevant at the moment, which says it could be 35 percent, et cetera.

We are proud of it and believe that it's much more than $52 million that would be the benefit to Chase customers based on the Chase information, and that we would be entitled, respectfully, to 30 percent of the noncash or the $52 million.

I think the Faught case of the Eleventh Circuit and the Staton case of the Ninth Circuit are both very, very well-reasoned decisions. We sit in the Eleventh Circuit, so we know that the Eleventh Circuit recognizes noncash settlements and the award on a percentage basis for that since that's a 2012 case.

THE COURT: Well, you've outlined all of this in your memorandum that you filed on October 15th in this case, docket number 3010, commencing on page 31 through about page 34.

Your cases are cited in there in your very fine, high-quality brief. You have submitted your motion for final approval. As you were speaking, I looked at those pages, all

of which we've had the chance to look over, and we put little tabs in your memorandum about this aspect because this is different, and it certainly is a great benefit to the class, a tremendous benefit to the class.

Hopefully, it will have the effect of eliminating, or at least reducing substantially, possible litigation about some of these same issues in the years to come.

The Court will approve it, $309,326.50.

The other aspects I will ask you or Mr. Gilbert to put into a final draft order for the Court's approval. The 30 percent figure is approved for the total amount of $162 million representing the settlement figure between you and Chase.

Any other matters?

MR. PODHURST: Thank you, Your Honor. I appreciate your attention. Thank you.

THE COURT: If there's nothing further, thank you, gentlemen.

[Proceedings conclude at 10:30 a.m.]

C E R T I F I C A T E

I hereby certify that the foregoing is an accurate transcription of proceedings in the above-entitled matter.

/S/ ROBIN MARIE DISPENZIERI

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DATE FILED

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