

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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IN RE: PORK ANTITRUST LITIGATION

Civil No. 18-1776 (JRT/JFD)

*This Document Relates To:*

THE DIRECT PURCHASER PLAINTIFF  
ACTION

**ORDER GRANTING DIRECT PURCHASER  
PLAINTIFFS' MOTION FOR INTERIM  
PAYMENT OF LITIGATION EXPENSES**

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The Court, having considered Direct Purchaser Plaintiffs' Motion for Interim Payment of Litigation Expenses (the "Motion") and the Memorandum of Law in support thereof (the "Memorandum"), after a duly noticed hearing, finds that an interim payment of litigation expenses is appropriate and **HEREBY ORDERS** that the Motion [Docket No. 2406] is **GRANTED** as follows:

1. The Court has jurisdiction over the subject matter of this litigation, including the actions within this litigation.
2. The previously approved notice of this Motion provided due and sufficient notice of the proceedings and of the matters set forth therein, including the proposed amount (up to \$1,460,600), to all persons entitled to such notice. (See Decl. Eric Schachter ("Schachter Decl.") ¶ 8, Exs. B–C, Apr. 5, 2024, Docket No. 2180; Preliminary Approval Order at 3–5, May 6, 2024, Docket No. 2218.) The notice further advised Direct Purchaser Plaintiff ("DPP") Class members that the Motion would be filed by July 3, 2024 (30 days

before the August 3, 2024 objection deadline), and a copy of the Motion and the supporting documents were posted on the settlement website. This process fully satisfied the requirements of the Federal Rules of Civil Procedure and the requirements of due process.

3. No objections to the Motion were received.

4. “It is well established that counsel who create a common fund like the one at issue are entitled to the reimbursement of litigation costs and expenses, which include such things as expert witness costs, mediation costs, computerized research, court reports, travel expenses, and copy, telephone, and facsimile expenses.” *Krueger v. Ameriprise Fin., Inc.*, No. 11-2781, 2015 WL 4246879, at \*3 (D. Minn. July 13, 2015).

5. Between May 1, 2022 and May 31, 2024 Co-Lead Class Counsel incurred Litigation Fund expenses of \$3,065,434.44, which have been reviewed and are now approved by the Court as reasonable and necessarily incurred in the litigation. (*See Decl. Michael H. Pearson ¶ 10*, July 3, 2024, Docket No. 2408.)

6. The Motion seeks \$1,460,600.00 in order to replenish the exhausted future litigation expense fund. The Court **GRANTS** this request. Allowing a portion of class settlement funds to be used for future expenses is a well-accepted practice. (*See, e.g., Order at 8–9*, July 22, 2022, Docket No. 1424.) *See also Newby v. Enron Corp.*, 394 F.3d 296, 302 (5<sup>th</sup> Cir. 2004) (affirming 37.5 percent set aside for establishment of a \$15 million litigation expense fund from the proceeds of a partial settlement); *In re Auto Parts*

*Antitrust Litig.*, No. 12-2311, 2018 WL 7108072, at \*2 (E.D. Mich. Nov. 5, 2018); *In re Auto Parts Antitrust Litig.*, No. 12-2311, 2016 WL 9459355, at \*2 (E.D. Mich. Nov. 29, 2016) (approving request to set aside nearly \$10 million for use in future litigation); *In re Auto Parts Antitrust Litig.*, No. 12-2311, 2015 WL 13715591, at \*2 (E.D. Mich. Dec. 7, 2015); *In re Transpacific Passenger Air Transp. Antitrust Litig.*, No. 07-5634, 2015 WL 3396829, at \*3 (N.D. Cal. May. 26, 2015); *In re Pressure Sensitive Labelstock Antitrust Litig.*, 584 F. Supp. 2d 697, 702 (M.D. Pa. 2008); *In re WorldCom, Inc. Sec. Litig.*, No. 02-3288, 2004 WL 2591402, at \*22 (S.D.N.Y. Nov. 12, 2004); *In re California Micro Devices Sec. Litig.*, 965 F. Supp. 1327, 1337 (N.D. Cal. 1997); *see also* Manual for Complex Litigation (Fourth) at § 13.21 (“[P]artial settlements may provide funds needed to pursue the litigation . . .”).

7. The approved payment should be paid *pro rata* from the Seaboard and Hormel Foods settlement funds once each of the respective settlements becomes final as defined by the terms of the Settlement Agreements as follows:

<b>Settlement Fund</b>	<b>Settlement Amount</b>	<b>Payment Amount</b>
Seaboard	\$9,750,000.00	\$975,000.00
Hormel Foods	\$4,856,000.00	\$486,500.00
<u>Total</u>	\$14,606,000.00	\$1,460,600.00

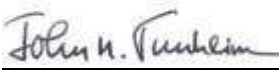
8. As indicated in the Memorandum, the future litigation expenses will only be used for reasonable expenses incurred in the ongoing litigation against the remaining

Defendants. In any future petition for reimbursement of expenses, or at the Court's request, Co-Lead Class Counsel will provide an accounting to the Court of their payment of future costs from this award. If the future litigation fund is not fully used, counsel for the DPPs shall first consult with the Court before returning the unused funds for distribution to DPP Class members who filed valid claims.

9. The Court also approves DPPs' request to transfer \$25,000.00 from the Smithfield settlement funds set for redistribution to the Litigation Fund as reimbursement for Class Representative Plaintiff Olean Wholesale Grocery Cooperative, Inc.'s service award payment.

**IT IS SO ORDERED.**

DATED: October 2, 2024  
at Minneapolis, Minnesota.

  
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JOHN R. TUNHEIM  
United States District Judge