

claims, the class members avoided the risk that either no class or a smaller class would be certified, depriving some or all the class members of any recovery whatsoever. Indeed, since the settlement was preliminarily approved, the likelihood that a broad class of borrowers would be certified was made less likely by the United States Supreme Court's recent decision in *Wal-Mart Stores, Inc. v. Dukes*, No. 10-277, 2011 WL 2437013 (U.S. June 20, 2011).

Plaintiffs and — in the event that a class had been certified — the class members, also avoided the risk that Defendants would have prevailed at trial or on appeal. As discussed in more detail in Plaintiffs' Motion for Final Approval, Plaintiffs' original theory — that the reinsurance arrangements at issue were illusory because no claims were paid — is no longer valid. Likewise, although Plaintiffs prevailed on Defendants' standing defenses in the Third Circuit, *Alston v. Countrywide Financial Corp.*, 585 F.3d 753 (3d Cir. 2009), the Supreme Court's June 20, 2011 decision to grant *certiorari* in *First American Financial v. Edwards*, No. 10-708, 2011 WL 2437037 (U.S. June 20, 2011), could call into question the continuing validity of the Third Circuit's holding and demonstrates that, by settling, Plaintiffs and the class members avoided a significant risk of non-recovery.

II. THE SETTLEMENT IS THE PRODUCT OF ARMS-LENGTH NEGOTIATIONS.

Because the settlement was reached by experienced counsel through arms-length negotiations and after considerable discovery, this Court should presume that it is fair and reasonable. *Mehling v. New York Life Ins. Co.*, 248 F.R.D. 455, 459 (E.D. Pa. 2008) (“[A] proposed settlement which is negotiated at arms-length by capable counsel after meaningful discovery is presumed to be fair and reasonable.”) (internal quotation marks and citation omitted); *In re Vicuron Pharm., Inc.*, 512 F. Supp. 2d 279, 284 (E.D. Pa. 2007) (finding a settlement was “presumptively reasonable, fair, and adequate” where it was “the product of

prolonged negotiations at-arms-length over many months between the class representatives and the defendants that required the mediation efforts of a retired California state judge” and after voluminous fact discovery). Evidence in the record fully documents the extended, arms-length nature of these settlement negotiations — aided by the assistance of an experienced mediator, the Honorable Edward N. Cahn. In the face of these circumstances, it would be impossible to argue that the settlement was the product of collusion or fraud. *In re Auto. Refinishing Paint Antitrust Litig.*, 617 F. Supp. 2d 336, 341 (E.D. Pa. 2007).

III. PLAINTIFFS HAVE MADE A STRONG SHOWING THAT THE SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE.

Plaintiffs’ request for approval of the settlement requires this Court to exercise its discretion. The Third Circuit has identified nine factors for the Court to consider in evaluating whether this settlement should be approved under Rule 23(e) as fair, reasonable and adequate: (1) the complexity, expense, and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; and (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation. *Girsh v. Jepsen*, 521 F.2d 153, 157 (3d Cir. 1975); *aff’d*, *In re Pet Food Prods. Liab. Litig.*, 629 F.3d 333, 349-51 (3d Cir. 2010) (“The district court must make findings as to each of the nine *Girsh* factors in order to approve a settlement as fair, reasonable, and adequate, as required by Rule 23(e).”). As Defendants demonstrate below, each of these factors militates in favor of approving the proposed settlement.

A. Continued Litigation Would Be Complex, Expensive and Lengthy.

The first *Girsh* factor, “the complexity, expense, and likely duration of the litigation,” cuts in favor of settlement because, if the parties continue to litigate this case, further proceedings would be complex, expensive, and lengthy. *Girsh*, 521 F.2d at 157 (quoting *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 463 (2d Cir. 1974)); see, e.g., *Chakejian v. Equifax Info. Servs.*, 2011 U.S. Dist. LEXIS 63455, at *26-28 (E.D. Pa. June 14, 2011) (holding that a potentially lengthy, complex, and expensive litigation weighs in favor of approving a settlement). As discussed *infra*, by settling the parties have avoided class certification proceedings, summary judgment proceedings and, potentially, a lengthy trial. The issues that likely would have been tried are extremely complex, involving expert analyses of whether 15 different reinsurance agreements (that were amended 67 times and encompassed 95 separate book years) provided for adequate transfer of risk between Balboa and non-party mortgage insurance providers. Defendants’ Memorandum in Opposition to Plaintiffs’ Motion for Class Certification (“Opp. to Class Cert.”) at 23, Dkt. No. 97.

Two other issues potentially would have expanded the likely duration of the litigation. First, because the issue of Plaintiffs’ Article III standing may be revisited by the U.S. Supreme Court in *Edwards*, it is likely that Defendants would have sought a stay pending the outcome of that case. Second, the complexity of the issues to be adjudicated, as well as the breadth of the potential exposure, ensured that any judgment likely would have been subject to costly and lengthy appeals. Accordingly, the proposed settlement easily satisfies the first *Girsh* factor.

B. There Is Little Substantive Opposition to the Settlement.

The second *Girsh* factor, “the reaction of the class to the settlement,” also weighs in favor of settlement approval, because there has been a near-unanimous acceptance of the settlement by

class members. *Girsh*, 521 F.2d at 157 (quoting *City of Detroit*, 495 F.2d at 463); *see, e.g., Hall v. Best Buy Co.*, 2011 U.S. Dist. LEXIS 31220, at *39-40 (E.D. Pa. Mar. 24, 2011) (holding settlement supported by “almost uniformly positive” reaction from class where one quarter of one percent opted out and none objected). There are a total of 61 class members who filed requests for exclusion (“opt-outs”) (representing only 44 loans) from a settlement class of over 270,000 transactions – far less than 1% of the class. This overwhelming acceptance of the settlement’s terms weighs heavily in favor of approving the settlement. *See, e.g., Pallas v. Pacific Bell*, 1999 WL 1209495, at *1 (N.D. Cal. July 13, 1999) (less than 1% of class objecting weighs in favor of settlement). Additionally, no class member has properly objected to the proposed settlement.¹ Thus, the reaction of the class to the settlement strongly supports settlement approval. *See, e.g., Hall*, 2011 U.S. Dist. LEXIS 31220, at *39-40 (holding settlement favored where one quarter of one percent of class opted out and none objected).

C. Settlement Was Reached After Substantial Pre-Trial Briefing and Discovery.

The third *Girsh* factor, “the stage of the proceedings and the amount of discovery completed,” weighs in favor of approving the settlement, because the proceedings and discovery undertaken thus far provided counsel for both parties “an adequate appreciation of the merits of the case before negotiating.” *Girsh*, 521 F.2d at 157 (quoting *City of Detroit*, 495 F.2d at 463); *Hall*, 2011 U.S. Dist. LEXIS 31220, at *40 (quoting *In re Warfarin Sodium Antitrust Litig.*, 391

¹ Mark and Deborah Miller filed a Notice of Intention to Appear at the Final Approval Hearing on July 11, 2011. Dkt. No. 135. The Millers’ Notice was improper, however, because, pursuant to this Court’s Order preliminarily approving settlement, the Millers should have set forth in the Notice the basis for their opposition to the settlement, along with any supporting documentation (Order Preliminarily Approving Settlement, Conditionally Certifying Class for Settlement Purposes, Approving Form and Manner of Class Notice, and Setting Date for Final Approval of Settlement, ¶ 18; Dkt. No. 124), which they did not do. Because the Millers did not state their grounds for opposition to the Settlement, it is impossible for Defendants to address

F.3d 516, 537 (3d Cir. 2004)). As detailed in Plaintiffs' Motion for final approval, the history of extensive discovery and other proceedings in this case demonstrates that counsel conducted a sufficient investigation of the facts and the law to properly evaluate the proposed settlement.

As to the facts, the parties engaged in active discovery and motions practice for nearly three years before reaching a settlement. That process included production of thousands of pages of documents, expert opinions and five depositions of fact witnesses.

The proceedings also included extensive briefing and hearings on issues related to both the merits and class certification. During the time this case was pending, Defendants filed a Motion to Dismiss (Dkt. No. 8) — fully briefed and presented at an extended oral argument — which was granted by this Court. Plaintiffs then appealed to the Third Circuit Court of Appeals (Dkt. No. 39), which reversed the decision, also after full briefing and oral argument. Further, Plaintiffs filed a motion to strike certain of Defendants' affirmative defenses and a motion for class certification (Dkt. Nos. 55 & 73), both of which Defendants briefed and opposed (Dkt. Nos. 56 & 97). Defendants' submission in opposition to class certification included a detailed expert witness declaration analyzing risk transfer issues that would need to be resolved at trial for each of the multiple reinsurance arrangements Plaintiffs challenged. Exhibit 1 to Disclosure of Dr. Kerry Dean Vandell, Ph.D. ("Vandell Rep."), Dkt. No. 100.

All of these proceedings have provided the parties with "an adequate appreciation" of the strengths and weaknesses of their respective cases and the costs and risks associated with continued litigation, and thus weigh in favor of settlement. *Hall*, 2011 U.S. Dist. LEXIS 31220, at *40 (quoting *In re Warfarin*, 391 F.3d at 537).

their issues here. Accordingly, Defendants reserve the right to supplement their submission if and when the Millers' grounds for objection become apparent.

D. Plaintiffs Faced a Great Risk that the First Amended Complaint Would Not Survive Summary Judgment Proceedings or a Trial on the Merits.

The fourth *Girsh* factor, “the risks of establishing liability,” provides compelling grounds for approval of the settlement, because success on the merits of Plaintiffs’ claims was far from certain. *Girsh*, 521 F.2d at 157 (quoting *City of Detroit*, 495 F.2d at 463); *see, e.g., Chakejian*, 2011 U.S. Dist. LEXIS 63455, at *33 (holding that the fourth *Girsh* factor supports settlement if there is “a real risk that [the defendant] would not be found liable” on the merits). Plaintiffs’ single claim was that Defendants violated Section Eight of the Real Estate Settlement Procedures Act (“RESPA”) 12 U.S.C. § 2601 *et seq.*, because the reinsurance agreements between Balboa and seven non-party private mortgage insurance providers allegedly did not constitute bona fide reinsurance. Defendants successfully moved to dismiss the First Amended Complaint in this Court on the grounds that Plaintiffs lack Article III standing because they do not allege an injury-in-fact — *e.g.*, that they were overcharged for mortgage insurance. Dkt. No. 38. And although the Third Circuit reversed that decision (Dkt. No. 41), the Supreme Court recently granted certiorari in *First American Financial v. Edwards*, No. 10-708, 2011 WL 2437037 (U.S. June 20, 2011), and may definitively decide whether a private litigant has Article III standing to allege a Section 8 RESPA claim without an allegation of overcharge. If the Supreme Court rejects the Third Circuit’s position, Plaintiffs’ claims would fail in their entirety.

Regardless, even apart from standing issues, Plaintiffs would have to prove that the reinsurance agreements entered into by Balboa failed to adequately transfer “risk” from the non-party MI providers to Balboa, *see* 12 U.S.C. 2607(c)(1) & (2) (establishing a “safe harbor” for bona fide payments for goods provided or “services actually performed”). This relatively arcane determination would require extensive expert analysis, making Plaintiffs’ claims dependent on the unforeseeable outcome of a battle of expert witnesses. Although when this action was

originally filed in December 2006, Plaintiffs alleged that Defendants had entered into the reinsurance arrangements without ever having to pay a single dollar to any insured, the landscape has changed significantly. Now, the scales are tipped heavily in Defendants' favor, as Balboa has since paid substantial claims to MI providers under the very reinsurance agreements that Plaintiffs allege failed to transfer "any real risk." *See* Vandell Rep. ¶ 39 & Exhibit 3, Dkt. No. 100; Memorandum of Law in Support of Plaintiffs' Motion for Class Certification ("Mem. ISO Class Cert.") at 5, Dkt No. 74. Recognizing this problem, Plaintiffs belatedly shifted their argument to focus on a particular termination clause included in most of the reinsurance agreements. *See* Mem. ISO Class Cert. at 8-9, Dkt. No. 73. But the clause Plaintiffs identified is not the "get out of jail free" card they allege — it was required by Balboa's regulator, the Vermont Department of Insurance. *See* Opp. to Class Cert. at 11-12; *see also* Radu Dep. 103:13-25; 1999 Vermont Exam, at 6; 2002 Vermont Exam, at 4. As such, Plaintiffs' claim that the clause somehow evidences a "kickback" scheme is even less persuasive than their claim that an agreement resulting in significant losses did not transfer any "real" risk.

Plaintiffs also bore the heavy burden of showing causation — that is, that each referral of a class member's mortgage insurance was "in exchange" for reinsurance premiums. The mere existence of a referral agreement "does not, in and of itself, establish that the lender's motive for referring business to Defendants is tied to that agreement as a quid pro quo." *Barnes v. Republic Mortg. Ins. Co.*, 2003 WL 1738454, at *5 (S.D. Ga. Feb. 5, 2003). And it is far from obvious that evidence of a "quid pro quo" could be gleaned from even an in-depth analysis of the agreements and referrals themselves, as Balboa maintained reinsurance agreements with *all* of the MI providers with whom it did business, and continued to place mortgage insurance with all of those MI providers, despite differences in the structure of the reinsurance arrangements and

variations in their terms between each MI provider and over time. Indeed, Defendants developed strong evidence that the referral of mortgage insurance to MI providers was affected by many factors totally unrelated to Balboa's reinsurance arrangements. *See, e.g.*, Opp. to Class Cert. at 27-28. Thus, attempting to show causation likely would have devolved into a largely-inscrutable debate between actuarial and financial experts, the results of which cannot be predicted. *Barnes*, 2003 WL 1738454, at *4 (“Determining whether a given agreement is evidence of a violation of RESPA requires the finder of fact to look at the agreement in the context of an ongoing relationship between an insurer and a lender.”); *see also* Vandell Rep. ¶ 55-60, Dkt. No. 100. As a result, Plaintiffs faced real risks in establishing liability that justify the compromise of their claims.

E. Plaintiffs Face a Strong Likelihood that Their Recovery Would Be Significantly Lower Than the Settlement Amount.

The fifth *Girsh* factor, “the risks of establishing damages,” also supports settlement here because it is far from certain that Plaintiffs could recover as much in damages as the settlement provides them, even assuming Defendants' liability. *Girsh*, 521 F.2d at 157 (quoting *City of Detroit*, 495 F.2d at 463); *see, e.g., Hall*, 2011 U.S. Dist. LEXIS 31220, at *42 (holding settlement supported where there was real risk that plaintiffs could not prove all the damages they alleged). Plaintiffs sought three times the amount of all mortgage insurance premiums paid by class members for mortgage insurance reinsured by Balboa. But they would likely recover far less than that, were Defendants found liable. RESPA's treble damages remedy only applies to “the amount of any charge paid for [a] *settlement service*.” 12 U.S.C. 2607(d)(2) (emphasis added). Even if mortgage insurance could constitute a settlement service — a matter Defendants would vigorously contest — not *all* premiums paid for mortgage insurance, charged at any time during the life of a mortgage loan, are paid for a “settlement service.” *See Bloom v. Martin*, 77

F.3d 318, 321 (9th Cir. 1996) (holding that RESPA does not reach certain fees payable after closing, explaining that the statute’s language “suggests a limitation to costs payable at or before settlement”); *see also Cohen v. J.P. Morgan Chase & Co.*, 608 F. Supp. 2d 330, 346 (E.D.N.Y. 2009) (“Under a temporal analysis, in which the status of a service as a settlement service is determined by its timing relative to settlement, post-closing review is not a settlement service.”); *Fitch v. Wells Fargo Bank, N.A.*, 709 F. Supp. 2d 510, 513 (E.D. La. 2010) (holding that BPO performed upon default is not a settlement service). Accordingly, any recovery of statutory damages would likely be limited to three times the amount of each class member’s payment for mortgage insurance at settlement. Not only would this have severely limited the statutory damages available, but it also likely would have eliminated the claims of many class members who did not make any payments related to mortgage insurance at closing. In addition, Section 8’s remedy only is available to the party who paid for the settlement service involved in the violation. Thus, class members with lender-paid mortgage insurance (“LPMI”) (approximately 60,000 class members) may have been excluded from any recovery.

As a result, there was a substantial chance that the class’ ultimate recovery could have been even less than the settlement payment of \$34 million. The total settlement payment of \$34 million divided by approximately 270,000 class members is roughly, without taking into account attorneys’ fees and settlement expenses, \$125 per person. By contrast, the average initial MI premium payment for all class members is a little over \$100 per class member. *See* Plaintiffs’ Memorandum of Law in Support of Unopposed Motion for Final Approval of Settlement, Section IV.B.1.g & n.22. Thus, even assuming all class members made payments for mortgage insurance at closing — and many did not — when the average initial MI premium payment is

trebled, the class is likely obtaining approximately 40% of the maximum they would have recovered had there been no settlement.

F. There Is a Strong Likelihood That a Class Would Not Be Certified.

The sixth *Girsh* factor, “the risks of maintaining the class action through the trial,” also supports settlement here, because Plaintiffs face the very strong likelihood that this Court would not certify a class, or would certify only a much smaller class. *Girsh*, 521 F.2d at 157 (quoting *City of Detroit*, 495 F.2d at 463); *see, e.g., Chakejian*, 2011 U.S. Dist. LEXIS 63455, at *36-37 (holding that the factor supports settlement where there is some risk that the claims might prove unsuitable for class adjudication). Under the Third Circuit’s *Hydrogen Peroxide* decision, a class can only be certified after a “rigorous analysis” of the claims and defenses, the evidence, and the manner in which the case will be tried. *In re Hydrogen Peroxide Antitrust Litig.*, 552 F.3d 305, 312, 307, 320 (3d Cir. 2008). Those requirements have now been validated and reinforced by the Supreme Court’s decision in *Wal-Mart Stores, Inc. v. Dukes*, No. 10-277, 2011 WL 2437013 (U.S. June 20, 2011).

First, no class may be certified if it would prevent Defendants from litigating their defenses to individual claims. *Wal-Mart*, slip op. at *27 (“[A] class cannot be certified on the premise that [the defendant] will not be entitled to litigate its statutory defenses to individual claims.”). Defendants contended that they had several viable defenses which could not adequately be litigated on a class basis. For instance, Defendants argued that the variances in the ceded premiums and reinsurance layers across all of the different reinsurance arrangements would have made the focus of any analysis of adequate risk transfer an individualized inquiry dependent upon, at a minimum, each class member’s MI provider and book year. *See Opp. to Class Cert.* at 22-23.

Second, *Wal-Mart* would have placed Plaintiffs' Rule 23(a)(2) commonality showing in serious doubt. *See id.* at *9 (holding that a "common question" "must be of such a nature that . . . determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke"). In *Wal-Mart*, the Supreme Court held there was no "common question" because each class member's claim turned on the subjective motivations of one of thousands of individual managers. *Id.* at *12. Similarly, each class member's claim in this case turned on the motivation for the referral of that particular individual's mortgage insurance. Plaintiffs offered no explanation for how they could have shown that the referral of every class member's mortgage insurance was governed by a single, uniform process or procedure. *See Opp. to Class Cert.* at 21-28. These shortcomings would have made the certification of a broad class unlikely under the *Wal-Mart* standard.

In addition, Plaintiffs' motion for class certification faced serious "predominance" issues. *See Fed. R. Civ. P. 23(b)(3)*. Defendants raised numerous issues as to which class-wide adjudication would not be possible. These include issues necessary to both Defendants' statutory safe harbor defense (the adequacy of risk transfer, addressed above), and to the resolution of Plaintiffs' claims on the merits. For example, Defendants contended that proving causation — whether referrals of mortgage insurance business were made "in exchange for" a "thing of value" (that is, reinsurance premiums) — cannot be done on a class-wide basis. As addressed above, it is far from obvious that the reinsurance agreements themselves could be sufficient evidence of causation, but even if they were, such proof would involve at least 95 individual expert analyses. Any other means of proof would necessarily be even more individualized.

Finally, even if a class were certified, it would likely be a smaller class than the settlement class. Plaintiffs seek to represent all borrowers whose mortgages were insured by any

of the seven MI providers with which Balboa had reinsurance agreements. *See* First Amended Compl. at ¶ 2; Opp. to Class Cert. at 8. Defendants contended, however, that each named Plaintiff could only represent borrowers whose mortgages were insured by the same MI provider, in the same book year.² *See* Opp. to Class Cert. at 36-37. Because the risk-transfer and causation elements of liability depended on an analysis of the specific reinsurance agreement at issue, the merits of the claims of the named Plaintiffs might be decided differently than those of class members whose loans were reinsured by different MI providers, and/or in different book years. Accordingly, Defendants contended that the named Plaintiffs were not typical of all members of their proposed class, and class members with MI from different providers and/or different book years likely would have been excluded from the class. The class size may have been further reduced because the settlement class includes borrowers whose mortgage insurance premiums were paid by their lender. Such borrowers may have been excluded from any class certified, as they would not be eligible to recover for a RESPA Section 8 claim. 12 U.S.C. § 2607(d)(2) (limiting the remedy to persons who paid for settlement service involved in the violation).

G. Defendants Could Not Withstand a Significantly Greater Judgment.

The seventh *Girsh* factor, “the ability of the defendants to withstand a greater judgment,” does not weigh against approving the settlement here. *Girsh*, 521 F.2d at 157 (quoting *City of Detroit*, 495 F.2d at 463); *see, e.g., Hall*, 2011 U.S. Dist. LEXIS 31220, at *42-43 (holding factor did not support settlement where defendant could “clearly . . . withstand a settlement far

² Each of the three current named Plaintiffs (Mary Alston, Kevin Collier, and Kimberly Druker) has or had one mortgage loan that was reinsured by Balboa, and each was insured by only one MI provider. Mary Alston’s mortgage was insured by PMI. *See* Opp. to Class Cert. at 3. Kevin Collier’s mortgage was insured by Genworth. *See id.* at 5. Kimberly Druker’s mortgage was insured by UGI. *See id.* at 6.

greater” than that agreed upon); *Chakejian*, 2011 U.S. Dist. LEXIS 63455, at *37-38 (holding that the factor’s role is to validate low settlements where required by the defendant’s meager finances, and that it is “neutral” where the amount is fair, regardless of the defendant’s ability to pay more). The proposed settlement payment amounts to approximately \$125 per class member. *See* Section E *supra*. As addressed further *infra*, this amount is reasonable, and more than Plaintiffs might recover in an adjudication on the merits. Nor is this a case where the settlement amount is deficient, but justified by Defendants’ few assets. Accordingly, Defendants’ ability to pay does not weigh for or against settlement in this case. *Chakejian*, 2011 U.S. Dist. LEXIS 63455, at *37-38.

H. The Settlement Fund Is Reasonable Compared to the Best Possible Recovery.

The eighth *Girsh* factor, “the range of reasonableness of the settlement fund in light of the best possible recovery,” supports settlement here because, analyzed in conjunction with the risks of continued litigation, the settlement amount is a reasonable proportion of the best possible recovery. *Girsh*, 521 F.2d at 157 (quoting *City of Detroit*, 495 F.2d at 463); *see, e.g., Chakejian*, 2011 U.S. Dist. LEXIS 63455, at *38-39 (analyzing the reasonableness of the settlement amount by discounting the best possible recovery by the risk of non-recovery or recovery of a smaller amount). Even if Plaintiffs were to achieve the best possible recovery, the settlement fund is still reasonable by comparison. Under the best possible recovery, as set forth in section E *supra*, Plaintiffs would recover three times the amount paid for mortgage insurance at closing, which is, at most, slightly higher than \$29 million multiplied by three or approximately \$88 million. Here, the settlement fund of \$34 million is over one third of the best possible recovery. Such a result is reasonable. *See Mehling v. New York Life Ins. Co.*, 248 F.R.D. 455, 462 (E.D. Pa. 2008) (“\$14.4

million represents approximately 20% of the ‘best possible’ recovery . . . the result is comparable to other class settlements approved in this District.”).

I. The Settlement Fund Is Reasonable In Light of the Risks of Continued Litigation.

The ninth *Girsh* factor, “the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation,” supports settlement approval because, analyzed in conjunction with the risks of continued litigation, the settlement amount is plainly reasonable. *Girsh*, 521 F.2d at 157 (quoting *City of Detroit*, 495 F.2d at 463); *see, e.g.*, *Chakejian*, 2011 U.S. Dist. LEXIS 63455, at *38-39 (analyzing the reasonableness of the settlement amount by discounting the best possible recovery by the risk of non-recovery or recovery of a smaller amount). As discussed above, an adjudication on the merits in this action could have led to a significantly reduced recovery, or no recovery at all. Here, Defendants are paying \$34 million in total, or approximately \$125 per class member. In comparison, the average initial MI premium paid by class members was approximately \$100. The recovery of approximately \$125 per class member is reasonable, given the risk that Defendants would not be found liable, or that no class — or a smaller class — would be certified.

IV. CONCLUSION

For all of the reasons stated above, the settlement reached by the parties represents a fair and reasonable resolution that avoids the inherent difficulties and uncertainty facing the plaintiffs if they are forced to continue litigating this matter.

Dated: July 15, 2011

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I, David L. Permut, hereby certify that a copy of the foregoing DEFENDANTS' SUBMISSION CONCERNING SETTLEMENT was served by ECF on July 15, 2011, upon:

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