

**IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT IN
AND FOR MIAMI-DADE COUNTY,
FLORIDA**

CASE NO. 07-43672 (CA 09)

STATE OF FLORIDA, OFFICE OF FINANCIAL
REGULATION,

Plaintiff,

v.

BERMAN MORTGAGE CORPORATION,
a Florida corporation, M.A.M.C. INCORPORATED,
a Florida corporation, DANA J. BERMAN,
as Owner and Managing Member,

Defendant.

and

DB ATLANTA, LLC, a Florida limited liability
company, et al.,

Relief Defendants.

**RECEIVER'S MOTION FOR AUTHORITY TO COMPENSATE
INDIVIDUALS FOR SUBSTANTIVE CONTRIBUTION TO
INSURANCE RECOVERY**

Michael I. Goldberg, the receiver (the "Receiver") for Defendants Berman Mortgage Corporation ("BMC"), M.A.M.C. Incorporated ("MAMC"), and Relief Defendants DB Atlanta, LLC, *et al.*, by and through undersigned counsel, hereby moves (the "Motion") this Court for approval to compensate select individuals for their substantive contributions to the insurance recovery, and as grounds states follows:

1. On December 11, 2007, this Court entered a *Temporary Injunction and Agreed Order Appointing Receiver* ("Receivership Order") appointing Michael Goldberg as the receiver for BMC and MAMC (the "Defendants") and the Relief Defendants (collectively, the

“Receivership Defendants”) to prevent the waste and dissipation of the Receivership Defendants' assets to the detriment of the investors (the “Lenders”) who entrusted over \$192 million (“Lender Funds”) to the Receivership Defendants.

2. The Lender Funds were secured by mortgages on approximately 40 real estate projects and properties.

A. Insurance Settlement

3. BMC had obtained a Specialty Errors and Omissions Liability Insurance Policy and a Miscellaneous Professional Liability Insurance Policy (the “Insurance Policies”). Multiple claims were made against the Insurance Policies.

4. On April 23, 2008, Receiver petitioned the Court to engage David and Joseph, P.L. (now known as Fuerst Ittleman David & Joseph, PL (“Special Counsel”) as the Receiver’s special litigation counsel to recover monies for claims which may be covered under the Insurance Policies. Following extensive discovery, two mediations and protracted settlement discussions, in 2014, the various parties reached a confidential settlement of the claims (the “Insurance Settlement”).

5. After motion, notice and hearing, on January 26, 2015, the Court entered an *Order Granting Receiver's Motion for Approval of Settlement Agreement and Entry of Bar Order Enjoining Lenders and Receivership Creditors From Prosecuting Claims Against Dana Berman, Mitchell Morgan and Berman Mortgage Corporation's Insurance Company.*

6. The Court subsequently approved a pro rata distribution of a portion of the proceeds of the Insurance Settlement to the Lenders who participated in the eleven remaining projects.

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B. Substantive Contribution to Insurance Settlement

7. This Motion seeks permission from the Court to compensate three individuals, *to wit*, Jerilynn Gidney, Gail Corenblum, and the estate¹ of Marvin Katz, who provided substantive and invaluable assistance towards the recovery of the Insurance Settlement. Without their contribution it is questionable whether any recovery would have been made.

(a) Jerilynn Gidney

8. Ms. Gidney was, along with the Receiver, the named putative class representative in the Class Action lawsuit brought against Messrs. Berman and Morgan, which proved to be the catalyst to the recovery. Ms. Gidney did not merely lend her name; she was proactive and involved in every step of the related actions.

9. Ms. Gidney was not only a named plaintiff in the Class Action, she was a named *defendant* in the declaratory action brought by the insurance company. Ms. Gidney endured over four years of litigation, primarily as a defendant. Ms. Gidney personally and actively facilitated the production of volumes of documents in the actions. Indeed, Ms. Gidney personally spent several *days* supervising the production of documents to the insurance company onsite in a warehouse, without air conditioning, so that the class of lenders could realize a recovery.

10. Ms. Gidney provided substantive assistance in responding to written discovery. Ms. Gidney appeared for deposition. Ms. Gidney likewise attended several mediations and court hearings. But that was not all. Ms. Gidney took on the very real risk of being a party to litigation, and when the Court ruled in favor of the insurance company, the insurance company sought a cost judgment of \$56,098.74 *against* Ms. Gidney. The Court ultimately entered a cost judgment against Ms. Gidney in the amount of \$23,780.37, which appeared in the official

¹ Mr. Katz passed away in 2016.

records until being vacated after the Third District's reversal. Ms. Gidney's participation and sacrifice was not nominal, it was real and tangible.

11. Typically, a named class representative is paid a class service award. Here because of the fiduciary nature which Gidney lent to the class, a reasonable class service fee of **\$10,000** is requested to be paid. In Altamonte Springs Imaging, L.C. v. State Farm Mut. Auto. Ins. Co., 12 So. 3d 850, 857 (Fla. 3d DCA 2009), the Third District Court of Appeals held that a \$10,000 service fee to a named class representative was fair and reasonable, explaining:

The position as fiduciary for the class is less an honor than a headache. The representative plaintiff is identified as a class litigant in public records (potentially affecting credit reports and disclosures for financing), is subject to fiduciary duties to the class, may be deposed and required to produce records, and must meet with counsel and appear in court, for example.

12. Like the class representative in Altamonte Springs, Ms. Gidney suffered through the extensive discovery process, and in fact had an adverse cost judgment entered against her. Notwithstanding the hurdles placed in her path, Ms. Gidney consistently placed the class of lenders ahead of her own goals. Because of the benefits conferred on the class of lenders as a whole, Ms. Gidney has earned such an award. See Pinto v. Princess Cruise Lines, Ltd., 513 F. Supp. 2d 1334, 1344 (S.D. Fla. 2007); In re Dun & Bradstreet Credit Servs. Customer Litig., 130 F.R.D. 366 (S.D. Ohio 1990) (two incentive awards of \$55,000, and three incentive awards of \$35,000); Bogosian v. Gulf Oil Corp., 621 F.Supp. 27 (E.D. Pa. 1985) (incentive awards of \$20,000 to each of two plaintiffs); In re REVCO Sec. Litig., Arsam Co. v. Salomon Bros., Inc., 1992 WL 118800, (N.D. Ohio May 5, 1992) (\$200,000 to the named plaintiff).

13. A fee of \$10,000 to Ms. Gidney is not only justified, it is mandated. There would not likely have been a recovery but for the efforts and participation of Ms. Gidney.²

(b) Gail Corenblum and the Estate of Marvin Katz

14. Although Ms. Corenblum and Mr. Katz were not named class plaintiffs, their respective substantive contribution was not lost on the Receiver. These individuals devoted countless hours educating Special Counsel on the complicated issues pertaining to the case, facilitated discovery, and provided substantive and meaningful contributions towards the ultimately successful final result. Like Ms. Gidney, these individuals participated in the discovery process (including the warehouse production), attended multiple court hearings and participated in all of the mediations. Like Ms. Gidney, their efforts made the results possible.

15. A fee of \$5,000 to both Ms. Corenblum and Mr. Katz's estate is warranted. There would not likely have been a recovery but for their respective efforts and participation.

16. As an alternative to a claim service fee, the Receiver requests that this Court authorize the above payments pursuant to the authority granted to the Receiver by the Receivership Order. More specifically, the Receivership Order vested the Receiver with the powers to marshal, maintain, and preserve receivership assets for the benefit of those whom the Receivership was designed to protect. Receivership Order at ¶13. In connection with such powers, the Receivership Order further provides that the Receiver may make such disbursements as are deemed, "in his discretion," necessary and proper for the marshaling of receivership assets. *Id* at ¶¶17, 19, 20. *See further* ¶28. Ms. Gidney, Ms. Corenblum, and Mr. Katz each proved necessary to collect, preserve and maintain significant Receivership Assets, and are deserving of special remuneration for their services.

² Significantly, Ms. Gidney has not requested or suggested that a fee be made to her. She contributed her time and energy without promise or expectation of a class service fee.

17. The Receiver finally notes that Special Counsel agreed to discount its earned fee in part so that the claim service fees could be made without having a net impact on available funds to the Class as a whole. *See* Pinto, 513 F.Supp. 2d at 1344 (Claim service fee approved in part because fee paid from monies otherwise entitled to class counsel). There is thus no prejudice to any member of the class by the disbursement of the requested claim service fees.

18. Notice of this Motion shall be provided by posting a copy (and the Notice of Hearing) on the Receivership website and sending a copy to the Lenders via e-mail.

WHEREFORE, Michael I. Goldberg, in his capacity as Receiver of BMC, MAMC, and related entities, respectfully requests this Court to enter an Order in the form attached hereto as **Exhibit 2** authorizing the Receiver to compensate: (a) Ms. Gidney the sum of \$10,000; (b) Ms. Corenblum the sum of \$5,000; and (c) Mr. Katz the sum of \$5,000, to be paid from the net proceeds recovered from Insurance Settlement and to grant such further relief as is just and proper.

Respectfully submitted,

/s/ Michael I. Goldberg
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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on this December 21, 2016, a true and correct copy of the motion was furnished via e-mail to the parties on the attached Service List. A copy of the motion (along with a Notice of Hearing) will also be posted on the receivership website.

/s/ Michael I. Goldberg

Michael I. Goldberg, Esq.

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