

ENTERED
SEP 12 2002
CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SANTA ANA OFFICE
BY *M* DEPUTY

P send email NO 1/10
FILED
SEP - 9 2002
CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
BY SOUTHERN DIVISION AT SANTA ANA DEPT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SANTA ANA DIVISION

THIS CONSTITUTES NOTICE OF ENTRY
AS REQUIRED BY FRCP, RULE 77(d). SANTA ANA DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

vs.

FIRST ALLIANCE MORTGAGE
COMPANY, et al.

Defendants.

Case No. SA CV 00-964 DOC
(MLGx)
CONSOLIDATED WITH CASES
SA CV 01-1174 DOC (MLGx)
SA CV 01-139 DOC (MLGx)
SA CV 01-306 DOC (MLGx); and

In re FIRST ALLIANCE MORTGAGE
COMPANY, a California
Corporation, et al.

Related Debtors.

Case No. SA 00-12370-LR
Chapter 11 Case

(Jointly Administered with:
Case No. SA 00-12371-LR;
Case No. SA 00-12372-LR; and
Case No. SA 00-12373-LR)

Affects All Related Debtors.

FRANK G. AIELLO, et al.
individually and on behalf
of all others similarly
situated,

Plaintiffs,

Adv. Proceeding Numbers
ADV. SA00-1456LR
ADV. SA00-1659LR

Corrected

**ORDER APPROVING
AWARD OF ATTORNEYS'
FEES AND EXPENSES**

v.

FIRST ALLIANCE CORPORATION,
a Delaware Corporation,
et al.

Defendants.

Date: September 9, 2002
Time: 8:30 a.m.
Place: Courtroom 9D
411 W. Fourth Street
Santa Ana, California

ENTER ON ICMS
SEP 12 2002
M *5/15*

1 The application of parties for an award of attorneys' fees and
2 reimbursement of expenses came before the Court on a noticed motion on
3 September 9, 2002. The parties presented the request in three applications,
4 one joint application on behalf of all parties seeking fees and expenses,
5 except for the State of Florida and Rein, Evans and Sestanovich (RES), which
6 was hired by the States, and separate applications on behalf of the State of
7 Florida and RES.

8 Having considered the applications and responses and heard
9 from the parties, the Court notes the following facts:

10 1. The parties previously stipulated that total fees and costs
11 requested would not exceed \$15 Million or 20% of the total amount in the
12 Redress Fund available for distribution to the members of the class (before
13 deducting attorneys' fees and costs) established pursuant to the Settlement
14 Agreement. The class was notified of this in the notices submitted to the
15 class and the parties have represented to the court that no class member has
16 submitted an objection to the fees and expenses requested.

17 2. The court has received no objections to the fees and
18 expenses requested, except that the State of Florida has objected to the total
19 amount of the agreed allocation to the law firm of Steinbock & Hofmann and
20 the joint plaintiff applicants have requested that the request of the State of
21 Florida and RES be reduced to 60% of the total fees requested, a reduction
22 equal to that agreed to by each of the other States seeking fees and
23 expenses.

24 3. The Court received the Federal Trade Commission's Omnibus
25 Response in which it analyzed the proposed allocation to each attorney
26 seeking fees and costs and stated it does not oppose the fees and costs
27 requested from the common fund and believes that under the circumstance
28 of this case that the amounts being sought are reasonable.

1 4. There has been no objection to any of the amounts requested
2 by any party as reimbursement for expenses.

3 5. The parties seeking fees and expenses have disclosed to the
4 Court their agreements for the allocation of any fee award, which includes an
5 agreement by the public entities and certain private counsel to reduce the
6 amount of fees requested by 40% of their lodestar amounts so as to
7 maximize the recovery to the class and keep the total fees and expenses
8 awarded at, or below, 20% of the funds available for distribution to the
9 members of the class (before deducting attorneys' fees and costs).

10 Based upon these facts and the submissions of the parties, the
11 Court finds as follows:

- 12 1. The Settlement in this matter creates a common fund.
- 13 2. The use of a percentage award in such a case has been
14 expressly authorized in this Circuit and this Court finds that this is the
15 appropriate method to determine compensation in this matter. *In re*
16 *Washington Public Power Supply System Sec. Litig.* 19 F.3d 1291, 1296 (9th Cir.
17 1994).
- 18 3. The "benchmark" for percentage awards in this Circuit is 25%
19 of the fund. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043 (9th Cir. 2002). As
20 noted, the parties have agreed that the amount requested as fees and costs
21 will not exceed 20% of the funds available for distribution to the members
22 of the class (before deducting attorneys' fees and costs), which is a
23 reasonable request and below this "benchmark" figure.
- 24 4. The parties have presented and the Court has reviewed the
25 time incurred by all counsel and the hourly rates of counsel, submitted in
26 connection with the applications. Based upon the declarations submitted,
27 including the declarations of third parties, and based upon the court's own
28 involvement in this litigation, the court finds that the time expended on this

1 litigation and the rates presented are reasonable. Based upon the
2 declarations submitted, this results in a total "lodestar" fee amount of
3 \$12,755,024.00 for all parties requesting fees.

4 5. The Court has compared this lodestar amount against the
5 percentage fee requested as a check on the reasonableness of the request.
6 As noted in the submissions of the parties, including that presented by the
7 Federal Trade Commission, if the fees requested are examined on a lodestar
8 basis involving all Coordinated Private Plaintiffs' counsel seeking fees, the
9 amount requested would result in an effective "multiplier" of the lodestar
10 amounts of 1.33%, with the range of these effective "multipliers" being 1.28%
11 to 1.37%. These are well within the levels approved in this Circuit. *Vizcaino*,
12 *supra*

13 6. The court has also considered various other factors in
14 considering the request for fees, as summarized in the *Manual for Complex*
15 *Litigation 3d*, § 24.121 (2002). These factors include the result achieved, the
16 contingent nature of the case and the financial risks involved, the complexity,
17 difficulty and duration of the litigation, the diligent prosecution of the case,
18 and the classes reaction to the request for fees. Based upon the court's own
19 knowledge of the course of the litigation, the presentations submitted by the
20 parties, as well as the third party declarations submitted in support of the
21 application, the court finds that:

22 (a) The result achieved, particularly under the circumstances,
23 including without limitation the bankruptcy of the corporate defendant, was
24 excellent. The recovery includes all remaining assets of the corporate
25 defendant as well as very significant individual contributions.

26 (b) The litigation was enormously complex, difficult and lengthy.
27 Many of the private parties initiated litigation as early as 1996 and the class
28 claims were brought in 1998. All of these parties, as well as the

1 governmental entities were confronted with strong litigation tactics by the
2 defense, eventually were confronted with the bankruptcy filing, the resulting
3 adverse judgments of the bankruptcy court, the necessity of appeals and the
4 final need to coordinate numerous parties in this court. The various plaintiffs
5 pursued this litigation with diligence in the face of great difficulties.

6 (c) As noted, no class member has objected to the amounts
7 requested.

8 7. Based upon the foregoing, the court finds and concludes that
9 the total amount of fees and costs requested by the joint application is fair
10 and reasonable and the total payment of fees and costs equal to 20 % of the
11 Redress Funds available for distribution to members of the class (before
12 deductions attorneys fees and costs), not to exceed \$15,000,000.00, is
13 justified and warranted.

14 8. The court also finds that

15 (a) The allocation of fees agreed to by the government counsel
16 (except Florida) and the private counsel (except RES) is fair and reasonable.

17 (b) That all costs identified in the respective declarations of
18 counsel should be paid as follows: Arizona - \$1,032, California - \$41,626,
19 Illinois - \$14,410, Massachusetts - \$79,740 (including payments made to RES
20 [SAAG]), NAAG - \$4,000, Wollins & Hellman - \$20,080, Michael E. Huber -
21 \$11,000, Edwin R. McCullough - \$ 6,304, Florida -\$78,115 (including
22 payments made to RES [SAAG]), RES -\$7,822, Berger & Montague - \$65,677,
23 Jenkins & Mulligan \$37,258, Piro, Zinna, Cifelli & Paris - \$15,032, David
24 Zlotnick - \$ 31,091, Steinbock & Hofmann - \$351,059 and AARP -\$53,091 (to
25 cover costs incurred by PSZYJ and MWE).

26 (c) That the States of Arizona, California and Illinois, the
27 Commonwealth of Massachusetts and the non-coordinated private attorneys
28 should be paid the amount which represents their pro-rata share of the fees

1 each has requested as those funds are received by the Redress Fund, up to a
2 total amount as follows: Arizona - \$105,591, California - \$ 521,115, Illinois -
3 \$517,500, Massachusetts - \$ 300,000, Wollins & Hellman - \$64,931, Michael
4 E. Huber - \$237,456 and Edwin R. McMullough - \$49,350.

5 (d) That NAAG should be paid attorneys fees of \$25,000.00.

6 (e) That it is appropriate to reduce the requested fees of Florida
7 to 60 percent of their lodestar amount. They should be paid the amount that
8 represents their pro-rata share of those fees as those funds are received by
9 the Redress Fund, up to the total amount as follow: Florida - \$ 236,962 and
10 RES - \$ 78,078.

11 (f) That Steinbock and Hofmann on its own account and on
12 behalf of AARP should be paid 60% of the balance of the award pro-rata as
13 those funds are received by the Redress Fund, up to the total amount of
14 \$7,228,008.

15 (g) That the Class attorneys: Berger and Montague, David
16 Meadows, Jenkins & Mulligan, Piro, Zinna, Cifella & Paris and David Zlotnick
17 should be paid 40 % of the balance of the award pro-rata as those funds are
18 received by the Redress Fund, up to the total amount of \$4,818,672.

19 9. The attorneys being awarded fees and costs shall from time to
20 time as necessary and appropriate submit stipulated orders setting forth the
21 exact amount of the pro-rata payments to the respective attorneys as
22 payments are received in the redress fund.

23 / / / /

24

25 / / / /

26

27 / / / /

28

1 10. Within thirty (30) business days of its receipt of any payments
2 into the Redress Fund, the Redress Fund Administrator shall pay the pro-rata
3 amount of 20% of such amounts to plaintiffs' counsel pursuant to the
4 allocations set forth in this Order, up to the total payments of \$15 million.

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS SO ORDERED

Dated: *September 9, 2002*

David O. Carter

The Honorable David O. Carter
United States District Court Judge