

**CURTIS J. TIMM and  
CAMAC FUND LP**

**Plaintiffs,**

**v.**

**IMPAC MORTGAGE HOLDINGS,  
INC.**

**Defendant.**

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**IN THE**

**CIRCUIT COURT**

**FOR**

**BALTIMORE CITY**

**Case No. 24-C-11-008391**

**PLAINTIFF, CAMAC FUND LP'S, MOTION FOR ATTORNEYS' FEES, LITIGATION  
COSTS, AND INCENTIVE PAYMENT**

Class Plaintiff, Camac Fund LP ("Camac"), individually and on behalf of all others similarly situated, respectfully submits this Motion for Attorneys' Fees, Litigation Costs, and Incentive Payment. The successful prosecution of this case created a common fund, as well as other value, that benefits all the Series B shareholders, not just the Series B shareholders who prosecuted the case. This Motion seeks a reasonable award of attorneys' fees and expenses, as well as a modest incentive payment, from the common fund for the risks, expenses and work that was required to produce that common fund. As described below, those fees would be paid when the class receives the benefits of the litigation.

This case has been pending since 2011, and Camac, as an Intervening Plaintiff, has been involved since 2013. Camac and co-Plaintiff, Curtis Timm ("Timm," and collectively, "Named Plaintiffs"), filed a Cross-Motion for Summary Judgment that was granted. As a result of this grant, that was twice upheld on appeal, certain preferred rights were restored to holders of defendant Impac Mortgage Holdings, Inc.'s ("Impac") Series B Preferred stock ("Series B").

Because of the victory, the Series B shareholders will receive payment of three quarters of dividends, totaling \$1,169,985.94 (the "2009 Dividend Amount"). While there is no timetable for payment of other accrued and unpaid dividends, the right to which was restored by the grant

of summary judgment, the total accumulated value is now in excess of \$18 million, and that value increases by \$1,559,581 per year. The value of the restored right for the Series B shareholders to elect two directors is difficult to quantify, but the right to participate in the governance of the entity is an important and valuable right that the litigation restored for the Series B shareholders.

The litigation provides significant relief for the benefit of the Class.<sup>1</sup> The result obtained by Class Counsel was achieved after nearly nine years of hard-fought litigation beginning in 2013. Class Counsel devoted substantial time, effort and resources to prosecute this Action. The case involved considerable litigation risks, including the necessity of proving Named Plaintiffs' claims as to both liability and relief in the Circuit Court, and then prevailing in two appellate courts. As ordered by the Court, no later than 60 days before the Class Hearing, Camac and Class Counsel will file a memorandum and supporting evidence demonstrating these significant benefits - monetary, declaratory, and injunctive - that Class Counsel obtained on behalf of the Class as well as the efforts and the litigation risks incurred to obtain this result for class members. That memorandum will show that Class Counsel's request of an award of fees and expenses is reasonable and appropriate. The Court will make a determination of what, if any, amount to award as fees and expenses following any comments received from members of the Class.<sup>2</sup>

Class Counsel undertook this action on a contingent basis and pursued it aggressively. For their extensive work in securing these results, Class Counsel respectfully requests that the Court award:

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<sup>1</sup> Unless otherwise indicated, capitalized terms shall have the same meaning as they do in the Order Certifying Class and Providing for Class Notice and Final Hearing ("Class Certification Order.")

<sup>2</sup> Instructions on when and how to comment on the fee request are contained in the Class Notice.

1. Attorneys' fees to be paid as follows:

(a) one-third (1/3) of the 2009 Dividend Amount, or \$389,995.31,<sup>3</sup> and

(b) one-third (1/3) of any future value received by Series B shareholders (including dividends, distributions of any kind, conversions, exchanges, redemptions, or other transactions that provide value to) in lieu of, attributable to, or related to, in whole or in part, the right of Series B holders to receive dividends until Class Counsel has been paid \$2,800,000, less the reduction described in footnote 3 (subject to a further limitation if the Exchange Offer and restructuring occurs as described below.)

2. In addition, Class Counsel seeks reimbursement from the 2009 Dividend Amount of \$19,300.49 in out-of-pocket litigation expenses, plus 50%<sup>4</sup> of the fees of the Notice Administrator, not to exceed \$11,000.00, for reasonable and necessary litigation expenses, which were advanced by Class Counsel without any guarantee that they would be reimbursed from the initial payment of three quarters of dividends. Therefore, the total request for payment of litigation expenses will not exceed \$30,300.49.

3. Class Plaintiff Camac requests that the court award it an incentive payment of \$5,000 from the 2009 Dividend Amount (an amount in line with incentive payments made in other similar cases) in recognition of its efforts in leading this litigation.

Recently, Impac announced its intention to seek to enter into a restructuring arrangement involving the Series B, Series C, and a promissory note ("Restructuring"). In relevant part the

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<sup>3</sup> In papers filed with this Court, Timm has stated that he owns 37,025 shares of Series B. Class Counsel does not intend to seek fees on his portion of the common benefit payments; therefore, the requested fee amount will actually be reduced by \$21,694.33. However, the mechanism to accomplish this is uncertain. Class Counsel will work with Impac and Timm to arrange that Timm's distribution is not reduced by Class Counsel's fee percentage but, if that cannot be accomplished, Class Counsel will remit to Timm the portion of its fee attributable to Timm's holdings of 37,025 shares.

<sup>4</sup> Impac has agreed to pay 50% of the fees of the Notice Administrator.

Restructuring involves Impac making an exchange offer to the Series B and Series C shareholders (“Exchange Offer”). Under the Exchange Offer, if approved, Impac will exchange, for each share of Series B, \$5.00 in cash and 20 shares of Impac common stock.<sup>5</sup> If sufficient consents are received, then the preferred shares will be redeemed and the preferred shareholders will receive the terms of the Exchange Offer plus the 2009 Dividend Amount. If sufficient consents are not received, nothing will change – the Series B shareholders will receive the 2009 Dividend Amount, and the restored right to have dividends continue to accumulate.

Because the Restructuring would foreclose any future dividend payments, Class Counsel seeks an alternative fee to 1(b) above if the Restructuring occurs. In addition to 1(a), and in lieu of the request in 1(b) for an award of 1/3 of future payments to the Series B shareholders, Class Counsel requests that the Court approve an award of 18.5% of the cash payments to the Series B shareholders under the Restructuring as attorneys’ fees.<sup>6</sup> This would result in an additional \$615,672.60 for a total of \$1,005,667.91 in fees, to Class Counsel.<sup>7</sup>

### CONCLUSION

For the foregoing reasons, and those that will be set forth in the supporting Memorandum, Class Plaintiff respectfully requests that the Court approve the request for:

- A. An award of attorneys’ fees (subject to the reduction described in footnote 3):

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<sup>5</sup> If its financial condition prevents the cash distribution, in lieu of the cash portion, Impac will instead issue a new Series D preferred stock with a \$.10 par value and 8.25% dividend, with 50 shares to be issued per share of Series B. These shares would be redeemed for par value plus accrued dividends when Impac is financially in a position to do so.

<sup>6</sup> If, as described in footnote 5, Impac is unable to make the cash payments, a determination will be made as to how the remaining fee would be paid.

<sup>7</sup> The fee and expense amounts stated herein are the maximum amounts that Class Plaintiff is seeking at this time; however, if further proceedings are necessary resulting from an appeal of the grant of the Proposed Final Relief, Class Plaintiff reserves its right to seek additional fees and reimbursement of expenses as a result of those proceedings.

(1) If the Restructuring DOES NOT occur: attorneys' fees of \$2,800,000, to be paid as follows: (a) one-third (1/3) of the 2009 Dividend Amount (\$389,995.31) to be paid by Impac to Tydings and deducted from the 2009 Dividend Amount; and (b) one-third (1/3) of any future dividends, distributions of any kind, conversions, exchanges, redemptions, or other transactions that provide value to Series B shareholders in lieu of or attributable to, in whole or in part, the payment of dividends to holders of Series B to be paid by Impac to Tydings from such dividends or distributions until the amount awarded by the Court has been paid in full,

OR

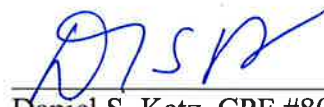
(2) If the Restructuring DOES occur: attorneys' fees of \$1,005,667.91, to be paid as follows: (a) one-third (1/3) of the 2009 Dividend Amount (\$389,995.31) to be paid by Impac to Tydings and deducted from 2009 Dividend Amount; and (b) 18.5% of the cash amount of the Restructuring paid to the Series B (\$615,672.60).<sup>8</sup>

B. An award of expenses not to exceed \$30,300.49: \$19,300.49 in expenses already incurred plus 50% of the fee of the Notice Administrator, with said amounts to be deducted and paid from the 2009 Dividend Amount.

C. An incentive award to Camac Fund LP in the amount of \$5,000 with said amount to be deducted and paid from the 2009 Dividend Amount.

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<sup>8</sup> See footnote 6.



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*Class Counsel and Counsel for Plaintiff,  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 12<sup>th</sup> day of August, 2022, copies of the foregoing  
*Plaintiff, Camac Fund LP's, Motion for Attorneys' Fees, Litigation Costs, and Incentive*  
*Payment* were sent by email, and first-class mail, postage prepaid, to:

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