IN THE DISTRICT COURT OF BLAINE COUNTY STATE OF OKLAHOMA

| MARK STEPHEN STRACK, SOLE SUCCESSOR TRUSTEE OF THE PATRICIA ANN STRACK REVOCABLE TRUST DTD | BLAINE COUNTY, OKLAHOMA F L 臣 D |
|---|------------------------------------|
| 2/15/99 AND THE BILLY JOE STRACK REVOCABLE TRUST DTD 2/15/99, AND |) JUL 1 3 2018 |
| DANIELA A. RENNER, SOLE SUCCESSOR TRUSTEE OF THE PAUL ARIOLA LIVING TRUST AND THE | CHRISTY MATLI, CT. CLERK BY DEPUTY |
| HAZEL ARIOLA LIVING TRUST, | |
| FOR THEMSELVES AND ALL OTHERS |) |
| Similarly situated, |) |
| Plaintiffs, |) |
| VS. |) Case No. CJ-10-75 |
| CONTINENTAL RESOURCES, INC., |) (Judge Hladik)) |
| DEFENDANT. |) |

JUDGMENT AND ORDER APPROVING ATTORNEYS' FEES AND CLASS REPRESENTATIVES' CASE CONTRIBUTION AWARD

This matter came on for hearing on the 11th day of June, 2018, on Class Representatives' and Class Counsels' "Motion For Attorneys' Fees, Litigation Costs And A Class Representatives Award From The Common Fund" (the "Motion") in the above-styled Class Action Litigation. All Parties were present and represented by counsel. Objector Daniel McClure, a Houston attorney, was also present; Objectors Kelly McClure Callant (Daniel McClure's sister) and Bruce McLinn (who sent a letter) were not present. The Court, having conducted an evidentiary hearing on June 11, 2018; having taken the matter under advisement; having considered all of the evidence

¹ Capitalized terms used herein shall have the same meaning as defined in the Settlement Agreement.

² This Journal Entry relates only to that portion of the Motion seeking attorneys' fees and a case contribution award to the Class Representatives; the remaining portion of the Motion related to reimbursement of litigation and administrative expenses shall be addressed in a separate Journal Entry.

³ "In a certified class action, the court may award reasonable attorney fees and nontaxable costs that are authorized by

presented, the filed declarations, the arguments of counsel, and all other related filings related to the Motion, and having given due consideration and evidentiary value, if any, to such materials;⁴ having entered a Minute Order on June 19, 2018, which is incorporated herein by reference; and being fully advised in the premises, **FINDS**, **ORDERS**, **AND ADJUDGES** as follows:

Findings of Fact - Notice

1. A detailed recitation of the Notice Campaign is set forth in the "Declaration of Douglas E. Burns and Terry L. Stowers on Behalf of Class Counsel" (the "B&S Declaration"), p. 16-20, ¶36-44, which the Court incorporates herein by reference as though fully restated, and adopts said paragraphs as the Court's findings of fact.

Conclusions of Law - Notice

- 2. The Court finds that notice of Class Counsel's intent to seek: (a) an award of an attorneys' fee of 40% of the Gross Settlement Payments for Claim Period 1 and Claim Period 2; and (b) a Class Representatives award (sometimes called a "Case Contribution Award") of \$100,000.00 to each of the four (4) Plaintiff trusts (i.e., a total award of \$400,000.00), was given to members of the Settlement Class as required by law.
- 3. Specifically, notice of this hearing was properly mailed by Class Counsel and the Settlement Administrator to Settlement Class Members with known valid mailing addresses and

law or by the parties' agreement.... In considering a motion for attorney fees filed after November 1, 2009:... [T]he court shall conduct an evidentiary hearing to determine a fair and reasonable fee for class counsel." [Emphasis added.] 12 O.S. §2023(G)(1) & (4)(a).

⁴ This was a matter tried to the Court sitting in its fiduciary capacity on behalf of the Class ("In a certified class action, the court may award reasonable attorney fees and nontaxable costs that are authorized by law or by the parties' agreement. . . . In considering a motion for attorney fees filed after November 1, 2009: . . . [T]he court shall act in a fiduciary capacity on behalf of the class in making such determination." [Emphasis added.] 12 O.S. §2023(G)(1) & (4)(b). Accordingly, considering this special statutory mandate, the Court gave all materials presented due consideration and the appropriate evidentiary value, if any, such materials were entitled to receive, with or without an objection being raised by a Party or the Objector. Therefore, all objections by Objector McClure to the evidence, including testimony and exhibits, that were not ruled on at the hearing were, and are hereby, overruled by the Court.

was published as required by this Court's Order on Plan of Notice (*see* Affidavits of Publication and Affidavit of Markham Sherwood concerning notice, previously filed with the Court). The Court previously approved such notice and now finds, orders, and adjudges the notice to the Settlement Class of this hearing was proper and sufficient under 12 O.S. § 2023, the Due Process Clause of the United States Constitution, and the Due Process Clause of the Constitution of the State of Oklahoma, and the members of the Settlement Class have been afforded a reasonable opportunity to object to the Motion.

Findings of Fact

- 4. A Summary of the Settlement and Litigation is set forth in the B&S Declaration, p. 1-15, ¶1-35; p. 20-29, ¶45-71, which the Court incorporates herein by reference as though fully restated, and adopts said paragraphs as the Court's findings of fact herein.
- 5. The Court approved the Settlement as adequate, fair and reasonable prior to conducting the hearing on the instant Motion.
- 6. Of the total of 33,890 putative Class Members, only three (3) objected to the requested attorneys' fee and class representatives' award. They include Bruce McLinn, who sent a letter, but did not appear, Dan McClure, and his sister Kelly McClure Callant.⁵ None of them objected to the settlement. Each of their positions is the same: the attorney fees are too much. Their interests are miniscule when compared to the total, and none of them are disputing the risks undertaken, the difficulty of the case, or complaining about the quality of the legal work performed by Class Counsel, or the results obtained.⁶

⁵ Dan McClure, a Houston attorney, appeared on behalf of himself contending a 40% contingency was too much, and he felt class action attorney fee requests were getting out of hand. He believed the attorney fees should be set at the \$275-425 hourly rate charged by lawyers in Northwest Oklahoma with a multiplier rewarding success. Mr. McClure defends class action matters and represents oil companies regularly.

⁶ See B&S Declaration, p. 30-31, ¶76, which is incorporated herein.

- 7. In his testimony and declaration, Judge William Heatherington provided a clear summary of the law regarding attorney fees in class action cases, which this Court found quite helpful. This Court concurs with Judge Heatherington's analysis and incorporates herein by reference as though fully restated the "Declaration of William C. (Bill) Hetherington, Jr." (the "Hetherington Declaration"), as well as the testimony of Judge Heatherington (the "Hetherington Testimony"), which the Court adopts as the Court's findings of fact herein.
- 8. Robert Gum's testimony and declaration (the "Gum Testimony" and "Gum Declaration") explaining the risks of litigation and listing the number of these cases with no recovery was sobering. This Court incorporates herein by reference as though fully restated the Gum Declaration and Gum Testimony, which the Court adopts as the Court's findings of fact herein.
- 9. In summary, Class Counsel is seeking an order from the Court, pursuant to 12 O.S. §2023(G) and relevant common law: (1) extending to the Settlement Class the contingency fee agreements entered into between the Class Representatives and Class Counsel; (2) awarding Class Counsel an attorneys' fee of 40% of the Gross Settlement Payments; and (3) awarding Class Representatives compensation for their contribution to this Settlement (sometimes called a "Case Contribution Award") of \$100,000.00 to each of the four (4) Plaintiff trusts (*i.e.*, a total award of \$400,000.00).

CONSIDERING THE THIRTEEN (13) STATUTORY FACTORS WHEN DETERMINING A REASONABLE FEE:

- 10. Pursuant to 12 O.S. §2023(G), in arriving at a fair and reasonable fee for class counsel, the court must consider the following factors:
 - (1) time and labor required,
 - (2) the novelty and difficulty of the questions presented by the litigation,
 - (3) the skill required to perform the legal service properly,

- (4) the preclusion of other employment by the attorney due to acceptance of the case,
- (5) the customary fee,
- (6) whether the fee is fixed or contingent,
- (7) time limitations imposed by the client or the circumstances,
- (8) the amount in controversy and the results obtained,
- (9) the experience, reputation and ability of the attorney,
- (10) whether or not the case is an undesirable case,
- (11) the nature and length of the professional relationship with the client.
- (12) awards in similar causes, and
- (13) the risk of recovery in the litigation.
- 11. Extensive and detailed evidence and testimony was presented to the Court as to each of these thirteen (13) statutory factors. In addition to the Hetherington Declaration, Hetherington Testimony, Gum Declaration and Gum Testimony, the Court incorporates herein by reference as though fully restated, B&S Declaration, p. 35-46, ¶83-97; p. 53-59, ¶103-123, and adopts said paragraphs as the Court's findings of fact herein. In addition to these incorporated findings of fact, the Court makes the following additional findings of fact as to several of the factors:
 - TIME AND LABOR REQUIRED: The Court has reviewed Counsel's time records showing 7,961 hours expended in this matter. Counsel also notes an additional 500 hours were expended since the records were compiled. Judge Hetherington estimated an additional 500 hours would be spent implementing the settlement over the next two years. At a minimum, this Court concludes at least 9,000 hours have been or will be expended in directly serving the members of this Class. Also, Counsel have expended many uncompensated hours filing *Amicus Curiae* Briefs in other cases and monitored and lobbied the legislature in order to protect royalty owners.

In addition to time and effort, Counsel have advanced nearly \$400,000 in litigation expenses. Law firms having the ability to advance this much time and money are very rare, and in Northwest Oklahoma may be impossible to find.

b. NOVELTY AND DIFFICULTY OF THE QUESTIONS PRESENTED: When Class Counsel accepted this case, they agreed to take on a legal Goliath. Had they been unsuccessful, they would have faced an emotional and financial loss that would have been devastating to most lawyers. Robert Gum stated that the lack of cash flow caused by a case such as this would crush an ordinary law firm.

This case was highly complex, and involved novel and difficult questions of law, in a legal area appearing to be in a state of flux. Even if counsel were successful on the legal questions, the nature and amount of damages would be disputed, and the facts would have been difficult to convey to a jury. The legal and factual uncertainties allowed Continental to take an aggressive defensive posture, and the outcome was always in doubt. Final resolution could have taken many more years. Given the stakes, Continental's Board of Directors likely instructed their staff to take whatever measures necessary to defeat this action and deter future actions.

PROPERLY: This case required counsel with substantial experience in both oil and gas royalty actions plus appellate practice and the willingness to invest nearly \$400,000 of their personal funds.

This court was very impressed with the talent of Continental's legal team, all highly skilled lawyers with supporting staff. They included Taylor Pope, Eric Eissenstat, and Brooks Richardson, in-house counsel for Continental; Terry Tippens, Jay

Walters, Steve Adams, and Graydon Luthey of Fellers, Snider, Blankenship, Bailey and Tippens and Gable Gotwals; Mark Christiansen of Crowe & Dunlevy; Glen Devoll of Gungoll, Jackson, Collins, Box and Devoll; and Guy Lipe of Vinson & Elkins of Houston, TX. Douglas E. Burns and Terry L. Stowers were an equal match. Robert Gum believed Burns and Stowers were the best plaintiff lawyers in their area of practice, and that is a complement appearing to be well earned.

- d. THE PRECLUSION OF OTHER EMPLOYMENT BY THE ATTORNEY

 DUE TO ACCEPTANCE OF THE CASE: No doubt counsel are always in the

 process of evaluating potential cases and starting or finishing others, but the time

 records show this case prevented them from spending significant time on other

 matters.
- e. THE CUSTOMARY FEE: The prevailing customary fee in these types of royalty owner class actions is a contingency fee of 40% of the common fund, and this is the amount the original plaintiffs agreed upon. Both plaintiffs and their counsel agreed it was fair and reasonable, and this is the best evidence of risks and benefits each of the parties believed acceptable. These types of cases are never taken on an hourly basis, and it is not a fee shifting case.

EXTENDING THE FEE AGREEMENT TO CLASS MEMBERS:

12. The Court has the duty to determine whether to extend the contingency fee agreement entered into between the Class Representatives and Class Counsel to the Class. By statute, it has the authority: "In a certified class action, the court may award reasonable attorney fees and nontaxable costs that are authorized by law or by the parties' agreement." [Emphasis

added.] 12 O.S. § 2023(G)(1). 12 O.S. §2023(G)(4)(b) requires the court to act in a fiduciary capacity on behalf of the class in making this determination.

- 13. "Contingent fee agreements may be appropriate in class action cases.... Many courts have held... that once a class is certified and a decision on the merits is had, the trial court may decide whether to approve the contingent fee agreement, and whether to extend the contingent arrangement to all class members." [Emphasis added.] Sholer v. State of Oklahoma, 1999 OK CIV APP 100, ¶¶ 13-14, 990 P.2d 294.
- 14. In addition to the Hetherington Declaration, Hetherington Testimony, Gum Declaration and Gum Testimony, the Court incorporates herein by reference as though fully restated, B&S Declaration, p. 30, ¶74-75; p. 31-35, ¶77-82, and adopts said paragraphs as the Court's findings of fact herein.
- 15. From the Common Fund, the Class Members not opting out will receive an average of \$1,703, less \$681 attorney fees, netting an average of \$1,022. To reap their benefit, they only need to open their mail. The Class Members shared none of the risks and obtained the same benefit as the original Plaintiffs. If Class Counsel had not invested their efforts and assumed the risk, it is likely the Class Members would have not known they had a claim. This court finds it hard to believe that any of the Class Members would begrudge Class Counsel for their 40% request (which is borne out by the fact that only 3 out of 33,890 filed an objection to the fee request.) Finally, because the fees are only calculated on the Common Fund from Claim Periods 1 and 2, the Class Members will benefit during the Future Production Period without cost. Potentially, this future amount could approach the amount of the Common Fund, reducing the percentage paid to Class Counsel to approximately 20%.

16. The court finds the 40% contingency fee based upon the common fund is fair and reasonable. To award less than a 40% contingency would allow the Class Members to net more than the Class Representatives.

LODESTAR ANALYSIS:

- 17. The Court notes that the statutory guidelines for determining a "reasonable fee" in class actions (12 O.S. §2023(G)) neither references either the "Percentage of Fund" or "Lodestar" approach to calculating the fee, nor mandates the use of either approach over the other. Whether the Court utilizes the Lodestar approach in the first instance to determine a reasonable fee, or if the Court utilizes the Percentage of Fund approach after considering the factors set forth in 12 O.S. §2023(G), the result will be, and is, the same a "reasonable fee" is a "reasonable fee" regardless as to how it is determined.
- 18. As testified to by Judge Hetherington, many courts utilize the Lodestar calculation as a cross-check to the reasonableness of the fee calculated using the Percentage of Fund method, after examining the required statutory factors.
- 19. The Court has reviewed the Lodestar evidence and testimony, and has performed a Lodestar analysis (*Burk v. City of Oklahoma City*, 1979 OK 115, 598 P.2d 659). In addition to the Hetherington Declaration, Hetherington Testimony, Gum Declaration and Gum Testimony, the Court incorporates herein by reference as though fully restated, B&S Declaration, p. 46-53, ¶98-102; p. 59-63, ¶124-129, and adopts said paragraphs as the Court's findings of fact herein concerning the Lodestar and enhancement analysis.

⁷ The Lodestar analysis was performed even though the Oklahoma Supreme Court has held that the Burk analysis (Lodestar) is not required when there is a controlling statute such as 12 O.S. §2023(G) ("We agree that generally the correct procedure for calculating a reasonable fee is to: 1) determine the compensation based on an hourly rate; and 2) to enhance the fee by adding an amount through application of the Burk factors. Nevertheless, <u>Burk applies in determining a reasonable attorney's fee in absence of a contract or statute</u>." [Emphasis added.] State ex rel. Dept. of Transp. v. Norman Indus. Development Corp., 2001 OK 72, ¶8.

- 20. The Court finds: (a) the time expended by Class Counsel was reasonable and necessary to advance and protect the interests of the Class (see ¶11(a) above and B&S Declaration, ¶84-88 incorporated herein); (b) consistent with Objector McClure's hourly rate (¶24 below) and the hourly rates charged and/or found to be reasonable for similar oil and gas class action litigation in Oklahoma and Northwest Oklahoma (see B&S Declaration, ¶98-91 incorporated herein), Class Counsel's hourly rates, as reflected in B&S Declaration, ¶102 incorporated herein, are fair, reasonable, and are "predicated on the standards within the local legal community" (Burk v City of Oklahoma City, 1979 OK 115, ¶20) for this type of complex litigation in Oklahoma and Northwest Oklahoma; and (c) an "enhancement multiplier" of approximately 3.17 is fair and reasonable, and warranted in this case (see B&S Declaration, ¶129 incorporated herein).
- 21. Under both the statutory procedure set forth in 12 O.S. §2023(G) and the Lodestar approach (*Burk*), the amount the Court has determined as a "reasonable fee" in this case is same; 40% of the Common Fund, or an award of \$19,920,000.00 from the Sub-Class 1 Payment, plus 40% of the actual Gross Settlement Payments for the Claim 2 Period.

OBJECTORS:

- 22. Dan McClure, a Houston attorney, appeared on behalf of himself and his sister contending a 40% contingency was too much, and he felt class action attorney fee requests were getting out of hand. He believed the attorney fees should be set at the \$275-425 hourly rate charged by some lawyers in Northwest Oklahoma with a multiplier rewarding success.
- 23. Mr. McClure defends class action matters and represents oil companies regularly. His financial interest as a royalty owner in this matter is minuscule, but his interest as an attorney responsible for defending oil and gas companies appears great. Mr. McClure's position in this

matter appears to be more in the nature of an *amicus curiae* acting on behalf of oil and gas class action defendants than as a class member.

24. Mr. McClure testified that the hourly rate that he typically charges oil companies to defend them in similar class actions brought by royalty owners, including here in Oklahoma, is \$700 to \$850 per hour (with his bill to be paid monthly).

CLASS CONTRIBUTION AWARD:

- 25. The Declaration of B&S, sets forth valid reasons each of the class representatives should be awarded \$100,000, for a total of \$400,000 as compensation for their time and effort in this action. In addition to the Hetherington Declaration, Hetherington Testimony, Gum Declaration and Gum Testimony, the Court incorporates herein by reference as though fully restated, B&S Declaration, p. 66-69, ¶133-143, and adopts said paragraphs as the Court's findings of fact herein
- 26. This court sees an additional reason. If Plaintiffs had been unsuccessful at trial, in order to deter future class actions, it is likely Continental would have asked that costs and attorney fees be assessed against the Class Representatives. Assuming Continental had similar costs and fees as Class Counsel, the Class Representatives were exposed to a considerable financial risk which could have easily been deducted from their future royalty. The Class Representatives assumed this risk, but the remaining Class Members had no risk. Given their success, equity requires the Class Representatives be compensated. In light of the risks and result, their request is reasonable.

Conclusions of Law

27. The Court finds the 40% contingency fee based upon of the Common Fund is fair and reasonable.

- 28. The contingency fee agreement entered into between the Class Representatives and Class Counsel is extended to the Class.
- 29. The Gross Settlement Payment for the Claim 1 Period is \$49,800,000. The court awards Class Counsel 40% of the Gross Settlement Payment for the Claim 1 Period, or an award of \$19,920,000.00.
- 30. The Gross Settlement Payment for the Claim 2 period is estimated at \$7,500,000, and the court awards Class Counsel 40% of the actual Gross Settlement Payments for the Claim 2 Period.
- 31. The Court hereby finds Class Counsel's request for the Class Representatives to be awarded a case contribution fee in the amount of \$400,000.00 to be fair and reasonable.

SEVERING THE CLAIMS OF THE OBJECTORS FOR APPEAL PURPOSES:

- 32. Of the total of 33,890 class members, three objected to the attorney fee and class representatives' award. They include Bruce McLinn, who sent a letter, but did not appear, Dan McClure, and his sister Kelly McClure Callant. None of them objected to the settlement. Each of their positions is the same: the attorney fees are too much. Their interests are miniscule when compared to the total, and none of them are disputing the risks undertaken, the difficulty of the case, or complaining about the quality of the legal work performed by Class Counsel, or the results obtained.
- 33. Without question, the attorney fee award is a helluva lot. However, this Court is convinced it was earned, justified, and comparable to awards in similar cases. The percentage was agreed upon by the Class Representatives and Class Counsel, and it is the best evidence of risks and benefits each of the parties believed acceptable before proceeding.

- 34. This court is unaware of any court denying or reducing an attorney fee award that satisfied these conditions because a Class Member complained that it was too much, particularly if it appeared the objectors were acting as friends of oil and gas companies routinely involved in these matters.
- 35. For these reasons, the objections of Bruce McLinn, Dan McClure, and Kelly McClure Callant are severed from the other Class Members for appeal purposes.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, that Class Counsel is awarded attorneys' fees to be paid from the Common Fund as follows: (1) 40% of the Gross Settlement Payment for the Claim 1 Period (\$49,800,000.00) for an award of \$19,920,000.00; and (2) 40% of the actual Gross Settlement Payments for the Claim 2 Period.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that Class Representatives are awarded a case contribution fee in the amount of \$400,000.00, to be divided as follows: (1) Mark Stephen Strack, as successor trustee of the Patricia Strack Revocable Trust is awarded \$100,000; (2) Mark Stephen Strack, as successor trustee of the Billie Joe Strack Revocable Trust is awarded \$100,000; (3) Daniela Renner, as successor trustee of the Paul Ariola Living Trust is awarded \$100,000; and (4) Daniela Renner, as successor trustee of the Hazel Ariola Living Trust is awarded \$100,000.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that pursuant to \$3.1(i) of the Settlement Agreement, Defendant Continental Resources, Inc. is directed to wire transfer \$20,320,000.00 (\$19,920,000.00 + \$400,000.00) from the Common Fund (*i.e.*, the Sub-Class 1 Payment) to a designated and segregated client trust account to be established and maintained by Burns & Stowers, P.C.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the claims of Objectors Bruce McLinn, Dan McClure, and Kelly McClure Callant are severed from the claims of the other Class Members for appeal purposes.

AND FINALLY, the Court expressly finds and determines there is no just reason to delay the finality of this Judgment and, pursuant to 12 O.S. § 994 (A), the Court expressly directs the filing of this Judgment as a Final Judgment.

IT IS SO ORDERED this /2 day of July, 2018.

The Honorable Dennis Hladik

Approved as to Form:

Class Counsel

Attorney for Continental Resources, Inc.

Objector Daniel McClure

CERTIFICATE OF SERVICE BY COURT CLERK

I hereby certify that on or before the 1/2 day of July, 2018, a Certified Copy of the foregoing was mailed, postage pre-paid, to:

Objectors:

Daniel M. McClure 2 Long Timbers Lane Houston, TX 77024

Kelly McClure Callant 3312 Whippoorwill Ln Enid, OK 73703

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CHRISTY

CHRISTY MATLI, COURT CLERK



