

**IN THE DISTRICT COURT OF BLAINE COUNTY
STATE OF OKLAHOMA**

**Mark Stephen Strack, Sole Successor Trustee)
of the Patricia Ann Strack Revocable Trust DTD)
2/15/99 and the Billy Joe Strack Revocable)
Trust DTD 2/15/99, and)
Daniela A. Renner, Sole Successor Trustee of)
the Paul Ariola Living Trust and the Hazel)
Ariola Living Trust,)
)
For Themselves and all)
Others Similarly Situated)**

Plaintiffs,)

vs.)

Continental Resources, Inc.,)

Defendant.)

**Case No. CJ-10-75
(Judge Hladik)**

DECLARATION OF BARBARA A. LEY

I, Barbara A. Ley, declare as follows:

1. I am the shareholder and President of Barbara A. Ley, A Professional Corporation, an Oklahoma City based accounting and consulting firm. The firm, founded in 1989, specializes in oil and gas related matters in addition to other areas of practice. I am a Certified Public Accountant licensed to practice in Oklahoma and Texas. I have also earned the credentials of “Certified Information Technology Professional” (CITP) and “Certified in Financial Forensics” (CFF), awarded by the American Institute of Certified Public Accountants. I have 40 years of public accounting experience and am experienced in petroleum and forensic accounting. I have been employed as an expert witness in numerous cases involving underpayment of royalty. My *curriculum vitae* is attached hereto as Exhibit 1.

2. Class Counsel¹ asked me to: (1) prepare a Class-wide Damage Model for mediation and settlement purposes; and (2) assist in allocating and distributing the Net Settlement Fund to Class Members pursuant to the Settlement Agreement.

3. Class Counsel reviewed and evaluated over 93.9 Gigabytes of data, including multiple databases and spreadsheets, 224,538 documents (1,017,957 pages of TIFF images), over ten (10) days of depositions including Continental corporate representatives and fact witnesses, as well as other publicly available sources of information (“Discovery Information”). *See* Declaration of Douglas E. Burns and Terry L. Stowers (“Declaration of B&S”), ¶47. Substantial portions of the Discovery Information was provided to me to utilize in the modeling of Class-wide damages. I, with input from Class Counsel, constructed a damage model for each of Class’ claims for use by Class Counsel in settlement negotiations. After Class Counsel made certain adjustments to the raw modeling calculations based upon further review of the Discovery Information, the Class Gross Damage Model for Time Period 1 reflected potential Class Damages of:

\$ 56.5 Million Unpaid Royalties
\$ 84.7 Million 12% Statutory Interest
\$141.2 Million Class Gross Damages for Time Period 1

See also Declaration of B&S, ¶47.

4. Class Counsel reviewed the quality of the Class Members’ oil and gas leases within each system and determined that further refinements to the Class Gross Damage Model for Time Period 1 were necessary as to the Woodford Shale Gas Gathering System and 3rd-Party Owned Gathering Systems. After making those necessary adjustments, the Class Adjusted Damage Model for Time Period 1 reflected potential Class Damages of:

¹ All capitalized terms not otherwise defined in this Affidavit shall have the same meanings ascribed to them in the Settlement Agreement.

\$ 39.6 Million Unpaid Royalties
\$ 65.4 Million 12% Statutory Interest
\$105.0 Million Class Adjusted Damages for Time Period 1

See also Declaration of B&S, ¶48.

5. In negotiating a final settlement of the Litigation, Class Counsel: (a) extensively reviewed the Discovery Information; (b) considered the complex law in Oklahoma regarding the obligations of operators in paying royalties; and (c) took into account the relative merits of specific claims and causes of action, as well as the various litigation risks associated with continuing the Class Action Litigation (“Litigation Risk Analysis”). After considering the Litigation Risk Analysis, Class Counsel recommended, and Class Representatives approved, a settlement for the Time Period 1 Claims as follows:

\$ 3,914,120.31 - Woodford Shale Gathering System
\$ 6,656,720.84 - Matli Gathering System
\$11,199,530.85 - Eagle Chief Gathering System
\$21,427,238.03 - Other Third-party Owned Gathering Systems
\$ 4,443,748.18 - Waste or Skim Oil Claim
\$ 2,158,641.79 - Additional Consideration on Oil Sales
\$49,800,000.00 - Total Gross Sub-Class 1 Payment

See also Declaration of B&S, ¶49.

6. The Total Gross Sub-Class 1 Payment represents a 47.42% recovery of the Class Adjusted Damages for Time Period 1. Viewed another way, the Total Gross Sub-Class 1 Payment represents a recovery of 100% of the Class Adjusted Royalties Due for Time Period 1, plus approximately 3% compounded annual interest thereon. *See also* Declaration of B&S, ¶50.

7. In view of the Litigation Risk involved in this Litigation, I consider this to be a very good recovery for Sub-Class 1, and considering Class Counsel’s estimated value of the Settlement as to Sub-Class 2 and the benefits for the Future Production Period, which together said estimates

exceed the value of the Sub-Class 1 recovery, I consider this to be an excellent Settlement for the Class as a whole.²

The Plan of Allocation and Distribution

8. Class Counsel requested that I serve as Settlement Administrator to oversee the allocation and distribution process (a role that I have assumed in several royalty owner class actions); I have agreed to serve in that role.

9. I submit that the proposed Plan of Allocation and Distribution attached to the Settlement Agreement as Exhibit “D” is fair, reasonable, and adequate, and in the best interest of the Class. *See also* Declaration of B&S, ¶52.

10. The Settlement Agreement in paragraphs 2.2, 2.3 and 3, sets out a very specific outline of the plan of allocation, payment and distribution of the Settlement Payments, and attaches a Plan of Allocation and Distribution as Exhibit D to the Settlement Agreement. This Plan of Allocation and Distribution was formulated by Class Counsel and myself, after our review the Discovery Information. In structuring the Plan of Allocation and Distribution, Class Counsel have considered the Litigation Risk Analysis. *See* Plan of Allocation and Distribution, ¶14 and Declaration of B&S, ¶53.

11. Relying upon this Discovery Information and Class Counsel’s Litigation Risk Analysis, I developed a model to calculate the asserted damages for the Sub-Class 1 Claim Period (with such amount being disputed by Continental) and the distribution of the Net Sub-Class 1 Payments at the Class Well level. In some cases, calculations were necessarily based upon estimates and/or other publicly available information because of information gaps and varying

² I was not asked to calculate or opine on the estimated values of the Settlement as to Sub-Class 2 and the benefits for the Future Production Period.

methods and sources of production data throughout the Sub-Class 1 Claim Period (“Distribution Model”). *See* Plan of Allocation and Distribution, ¶15 and Declaration of B&S, ¶54.

12. The Settlement Administrator’s Distribution Model represents a reasonable method to facilitate the distribution of Net Sub-Class 1 Payments to the Eligible Sub-Class 1 Members, but should not be treated as payment of additional royalty on past production or interest. Rather, all amounts represent a compromise of multiple disputed Released Claims for Sub-Class 1. *See* Plan of Allocation and Distribution, ¶16 and Declaration of B&S, ¶55.

13. Utilizing the Discovery Information, and considering Class Counsel’s Litigation Risk Analysis, and pursuant to paragraph 3.2(i) of the Settlement Agreement, Class Counsel and I have determined a reasonable Sub-Class 1 Gross Payment by System or Claim Allocation to be as follows:

\$ 3,914,120.31 - Woodford Shale Gathering System
\$ 6,656,720.84 - Matli Gathering System
\$11,199,530.85 - Eagle Chief Gathering System
\$21,427,238.03 - Other Third-party Owned Gathering Systems
\$ 4,443,748.18 - Waste or Skim Oil Claim
\$ 2,158,641.79 - Additional Consideration on Oil Sales
\$49,800,000.00 - Total Gross Sub-Class 1 Payment

See Plan of Allocation and Distribution, ¶17 and Declaration of B&S, ¶56.

14. I will determine the Net Sub-Class 1 Payment pursuant to paragraph 1.24(i) of the Settlement Agreement and thereafter proportionately reduce the Sub-Class 1 Gross Payment by System or Claim Allocation to determine the “Sub-Class 1 Net Payment by System or Claim Allocation” pursuant to paragraph 3.2(i) of the Settlement Agreement. *See* Plan of Allocation and Distribution, ¶18 and Declaration of B&S, ¶57.

15. With due consideration given to various production characteristics, such as volume of production, timing of production, and the other factors utilized in constructing the Damage Model, I will further allocate each of the resulting Sub-Class 1 Net Payment by System or Claim

Allocations to each Class Well determined to be connected or related to that system or claim pursuant to paragraph 3.2(ii) of the Settlement Agreement. I will then provide to Continental a report of the Sub-Class 1 Net Payment by System or Claim Allocation to the Class Well level. *See* Plan of Allocation and Distribution, ¶19 and Declaration of B&S, ¶58.

16. Utilizing the report of the Sub-Class 1 Net Payment by System or Claim Allocation to the Class Well level that I will provide to Continental, Continental will distribute the Net Sub-Class 1 Payments to the Eligible Sub-Class 1 Members pursuant to paragraphs 2.2 and 3.2 of the Settlement Agreement, which are incorporated herein by reference. Furthermore, all other remaining distribution issues related to the Net Sub-Class 1 Payments shall be governed by paragraphs 2.2 and 3.2 of the Settlement Agreement. *See* Plan of Allocation and Distribution, ¶20 and Declaration of B&S, ¶59.

17. The calculation and distribution of the Net Sub-Class 2 Payments shall be determined and distributed pursuant to paragraphs 2.3, 3.4 and 3.5 of the Settlement Agreement, which are incorporated herein by reference. *See* Plan of Allocation and Distribution, ¶21.

On or before the Distribution Date for the Net Sub-Class 2 Payment Continental shall:

- i. Proportionality reduce the Sub-Class 2 Payments by the Attorney's Fees and Expenses awarded by the Court and;
- ii. Distribute to Sub-Class 2 Members through Continental's normal payment system the remaining balance of the Additional Consideration, to the extent each Sub-Class 2 Member is set up in "pay status" in Continental's payment system. Said payment shall be characterized as "Net Settlement Payment" and not payment of oil and gas royalties on the Distribution Check. No allocation of principal and interest shall be made by Continental as part of the payment process. Calculation of gross production taxes, if any, shall be made by Class Counsel and withheld by Continental from the Net Sub-Class 2 Payments and transferred to Class Counsels' Client Trust Account and paid directly by Class Counsel to the Oklahoma Tax Commission, as necessary. Class Counsel shall provide notice to the Oklahoma Tax Commission and obtain an order of the Court related to taxes owed, if any. Each Sub-Class 2 Member releases, and the Class and indemnifies, the Released Parties as to any claims related to any calculation, payment or non-

payment of gross production taxes related to any Sub-Class 2 Payment for the Sub-Class 2 Claims. Continental shall make the Net Sub-Class 2 Payments on or before the Distribution Date for Net Sub-Class 2 Payments. When making the distribution of the allocated share of the Net Sub-Class 2 Payment to a particular Class Member, if that individual Class Member had previously been overpaid royalties by Continental such that the Class Member's royalty account has a negative balance and/or is in suspense pending recoupment of the overpayments at the time of the distribution, Continental shall be entitled to offset the Net Sub-Class 2 Payment to that individual Class Member to the extent necessary to offset the negative balance of that Class Member's royalty account;

- iii. Within 30 days after the Distribution Date for the Net Sub-Class 2 Payments, Continental shall provide Class Counsel and the Court a report reflecting the amount of the Net Sub-Class 2 Payments sent to each Sub-Class 2 Member; and
- iv. 180 days after Continental issues the Net Sub-Class 2 Payments, Continental shall provide a report to Class Counsel reflecting the unpaid balance representing the Residual Net Sub-Class 2 Payments as of the date of the report. During this 180-day period following the initial distribution of the Net Sub-Class 2 Payments, if the status of a Sub-Class 2 Member who was not in "pay status" at the time of the initial distribution is changed to a "pay status", Continental may issue that owner its Net Sub-Class 2 Payment; if Continental does not make such supplemental distribution, the change of status shall be noted on the report provided to Class Counsel. Upon approval of the Residual Sub-Class 2 Payments by the Court. *See Settlement Agreement, ¶3.5.*

See also Declaration of B&S, ¶60.

18. As the approved Settlement Administrator, the allocation of the Net Sub-Class 1 Payments and Net Sub-Class 2 Payments shall be under my direct supervision as the Settlement Administrator and shall be accomplished as described herein, and the distribution of the Net Sub-Class 1 Payments and Net Sub-Class 2 Payments shall occur on or before the dates provided for in the Settlement Agreement. *See Plan of Allocation and Distribution, ¶22 and Declaration of B&S, ¶61.*

19. It is important to note that this is not a claims made settlement, nor is it a settlement where a Class Member must take further action to participate. Further, the Settlement Payments

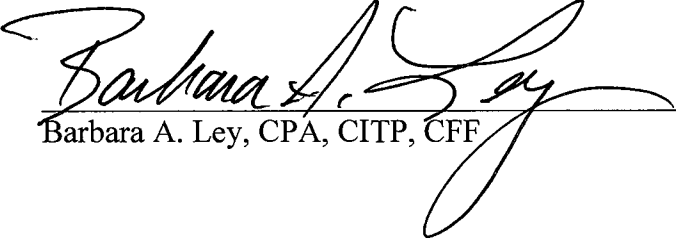
are not reduced by the value of Claims attributable to Class Members who opted-out of the Settlement Class. *See also* Declaration of B&S, ¶62.

20. If for any reason Continental does not make distribution of the Settlement Payment (*e.g.*, returned or stale-dated distribution checks, accounts not in “pay status”, etc.), Continental is required to transfer the residual of the Payments to a Court-approved account, subject to further order of the Court as to: (1) the scope of reasonable efforts to be undertaken by Class Counsel or myself to locate and distribute any of the balance of the Residual Sub-Class 1 or 2 Payments to Class Members; and (2) as to any balance of the Residual Sub-Class 1 and 2 Payments remaining after completion of those efforts, the distribution or use of the remaining balance of the Residual Payments pursuant to Oklahoma law. *See* Settlement Agreement, ¶3.2 & 3.5 and Declaration of B&S, ¶63.

21. This straightforward and logical Plan of Allocation and Distribution utilizes a reasonable methodology frequently utilized for settlement allocations in royalty class actions and that has been approved by both state and federal courts as fair, adequate, and reasonable, and in the best interest of the Class.

I declare under penalty of perjury, that the foregoing is true and correct to the best of my knowledge and belief.

Dated: June 4, 2018


Barbara A. Ley, CPA, CITP, CFF

Barbara A. Ley, CPA, CITP, CFF

- Office Address:** 6305 Waterford Boulevard, Suite 450
Oklahoma City, Oklahoma 73118
- Education:** Perry High School – 1973 Graduate
Ranked #1 in Graduating Class
- Oklahoma State University – Bachelor of
Science in Accounting – December 1976
Phi Kappa Phi – GPA 3.9/4.0
- Continuing Professional Education –
24 to 120 Hours each year from 1977 through present
- Profession:** Certified Public Accountant, holding permits to
practice in Oklahoma and Texas

Professional and Business History:

January 1989 – Present

President – Barbara A. Ley, A Professional Corporation, a full service accounting firm with 15 employees

- Accounting, Tax and Management Consulting services for businesses, individuals, trusts and estates.

Services provided include:

- Consultation, litigation support and forensic accounting relating to:
 - fraud allegations
 - oil and gas joint interest billings
 - Class Action Certifications
 - oil and gas royalty owner issues
 - divorce proceedings
 - bankruptcy and insolvency issues
 - financial statement analysis
 - purchase and sale of business interests
 - damage calculations
 - insurance claims
 - class action litigation

- Auditing procedures
 - financial audits
 - agreed upon procedures

January 1989 – Present (continued)

- Court appointed accountant for various Chapter 7 & 11 bankruptcy cases.
- Tax planning and preparation for a wide variety of individuals, closely held businesses, trusts and estates and non-profit organizations.
- Clients include royalty owners, working interest owners, oil and gas operators and oil and gas service companies.

November 1986 – December 1988

Partner – Ley & Bartley, Certified Public Accountants

- Accounting, tax and consulting services were provided to individuals, financial institutions, businesses, trusts and estates.
- Performed agreed upon procedures on behalf of oil and gas operators and oil and gas service companies.

July 1983 – November 1986

President – Snipes & Ley, A Professional Corporation

- Provided accounting and tax services to a variety of individuals, financial institutions, businesses, trusts and estates.
- Clients included publicly held pipe and supply company, drilling funds and oil companies involved in drilling and operations, royalty owners and working interest owners.

January 1977 – July 1983

Peat Marwick, Mitchell & Co., Certified Public Accountants

- Senior Tax Manager (1983)
- Scheduling coordinator for tax department (1980-1982). Responsible for scheduling of staff of 20 professionals.
- Continuing Professional Education Director (1979-1982). Responsible for education of tax department of 35 professionals. Instructor of various professional education courses.
- Tax Manager (1981).

- Tax and Audit Senior (1978).
- Audit Staff (1977-1978).
- Clients included publicly traded oil companies and financial institutions, publicly traded supply companies, numerous drilling funds, oil and gas equipment partnerships, drilling rig operators, private oil and gas companies and wealthy individuals.

Professional Organizations & Activities

Oklahoma Accountancy Board

- Reappointed by Governor Mary Fallin for a five year term beginning July 1, 2012
- Appointed by Governor Brad Henry for a five year term beginning July 1, 2007
- Chairman 2011-2012, 2016-2017
- Secretary 2008-2009, 2013-2014
- Vice Chair 2010-2011, 2015-2016

National Association of State Boards of Accountancy

- CPA Licensing Examinations Committee 2009-2010
- Education Committee 2008-2009
- Nominating Committee 2015-2018
- Examination Review Board 2015-2018, Vice Chair 2016-2017, Chair 2017-2018

American Institute of Certified Public Accountants

- Board of Examiners 2013-2014
 - State Board Committee 2010-2014, Chair 2013-2014
 - Executive Committee 2013-2014
- AICPA Council Member 2006
- Virtual Grass Roots Panel 2005-2010
- Appointed member of the national Tax Practice Improvement Committee 2004-2007 and co-author of article on “Document Retention”
- CPA Exam item reviewer 2004
- Appointed three-year member of the national Tax Practice Guides Committee and author of the initial Oil and Gas Tax Practice Guide
- Member Management Consulting Services, Information Technology and Tax Divisions
- Oklahoma representative to National IRS/CPA Issues Meeting 2000
- Certified Information Technology Professional certification (CITP)
- Certified in Financial Forensics

Oklahoma Society of Certified Public Accountants

- Accounting Hall of Fame Inductee-2010
- Board of Directors 2002-2008

- President 2006-2007
- President Elect 2005-2006
- Treasurer 2004-2005
- Secretary 2002-2004
- Executive Committee 2002-2008
- Planning Committee 2005-2006
- Tax Committee Chair 1999-2001
- Nominating Committee 2000, Chair 2007, 2008
- Oklahoma Representative to Austin Service Center Focus Group
- Oklahoma Tax Commission Liaison (4 years)
- Various committees

Oklahoma Society of Certified Public Accountants Educational Foundation

- Board of Directors 2007-2008

Texas Society of Certified Public Accountants

Other Professional Activities:

- Oklahoma State University School of Accounting 2012 Distinguished Alumna Award
- Recognized by CPA Magazine as one of the Top 100 Most Influential Practitioners, December 2006
- Appointed member of Citizen and Legislative Task Force on Tax Reform 2002
- Provided analysis of proposed legislation in accounting and tax related areas for the Oklahoma Office of State Finance
- Served as Governor Frank Keating's appointee on The Citizens' Task Force on Taxation and as the Task Force's chairman of the Subcommittee on Estate Tax
- Co-Chairman on Business issues for Governor Keating's Task Force on Taxes
- Monitoring committee for "Taking Oklahoma's Business Tax Climate into the 21st Century" study sponsored by the Office of State Finance
- Speaker for various organizations, including Oklahoma City Chamber of Commerce, Tulsa Chamber of Commerce, Oklahoma Bar Association and various civic organizations