

**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.)

BLAINE COUNTY, OKLAHOMA
F I L E D

AUG 18 2021

CHRISTY MATLI, CT. CLERK
BY  DEPUTY

CASE No. CJ-10-75
(JUDGE HLADIK)

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

Recitals

This matter comes before the Court on remand from the Oklahoma Supreme Court on Class Counsel's¹ and Class Representatives' Motion for Attorneys' Fees and a Class Representatives Award from the Common Fund (the "Original Fee Motion"),² as modified by Class Counsel's Supplemental Declaration ("B&S Supplemental Declaration"), collectively the "Fee Motion on Remand" in the above-styled Class Action Litigation. The Court summarizes the status of the Fee Motion on Remand as follows:

¹ Capitalized terms used herein shall have the same meaning as defined in the Settlement Agreement of the Class Action Litigation unless otherwise defined.

² The Original Motion also included a request for reimbursement of litigation expenses; that portion of the motion has already been addressed in a separate Journal Entry.

1. On April 3, 2018, Class Counsel filed the Original Fee Motion.
2. Daniel McClure and Kelly McClure Callant (collectively “McClure”) filed objections to the Original Fee Motion (“Objections”). The objection of Daniel McClure, who pursued his objection through appeal as set forth below, was filed May 21, 2018, then amended and supplemented on June 11, 2018.
3. On June 5, 2018, Class Counsel filed and submitted to the Court the “Declaration of Douglas E. Burns and Terry L. Stowers on Behalf of Class Counsel” (the “B&S Declaration”).
4. On June 11, 2018, the Court held the statutorily mandated evidentiary hearing on the Original Fee Motion and McClure’s Objections (hereinafter the “Evidentiary Hearing,” with “Tr.” referencing the Transcript thereof).³
5. On June 20, 2018, the Court entered a Minute Order (“Minute Order”) overruling McClure’s Objections and granting Class Counsel’s Original Fee Motion, which was further memorialized by Judgment entered on July 13, 2018 (“Original Judgment”).
6. Daniel McClure appealed the Original Judgment and on April 20, 2021, the Oklahoma Supreme Court issued its Opinion Reversing the Original Judgment, (“Opinion”) and remanded the Original Motion to this Court for further proceedings consistent with the Opinion, *see* 2021 OK 21. Additionally, the Oklahoma Supreme Court awarded Daniel McClure’s appeal-related costs in the amount of \$1,975.00 and granted his motion for appeal-related attorney fees in an amount to be determined by this Court on remand.
7. On June 22, 2021, Class Counsel, Class Representatives, McClure and Daniel McClure’s attorney, Harvey Ellis, participated in a mediation with former Oklahoma Supreme

³ “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).

Court Justice Daniel Boudreau serving as the mediator (“Mediation”).

8. As a result of the Mediation, the parties reached an agreement to resolve McClure’s Objections to the Original Fee Motion and the Fee Motion on Remand. Additionally, the agreement addressed the Supreme Court’s awards to Daniel McClure of appeal-related attorney fees and costs. The agreement required the approval of this Court.

9. On July 19, 2021, Class Counsel and McClure filed a Joint Motion to Approve Settlement Term Sheet, and on July 20, 2021, the Court granted said Joint Motion (“Order Approving the Settlement Term Sheet”).

10. On or about July 27, 2021, Class Counsel submitted the Supplemental Declaration as required by the Settlement Term Sheet and Order Approving the Settlement Term Sheet (“B&S Supplement Declaration”) wherein Class Counsel “*reduce[d] their requested fee to \$17,150,171.40 (28% of the \$61,250,612.24 Sub-Class 1 and Sub-Class 2 common fund*” (hereinafter the “**Requested Attorneys’ Fee**”) and “*reduce[d] their requested case contribution award to the Class Representatives to \$30,000.00 . . . for each of the two individuals, Mark Strack and Daniella Renner, in their capacities as trustees of the four trusts which are named plaintiffs*” (“**Requested Class Representatives’ Fee**”) (collectively, the “**Requested Fees**”).

11. Class Counsel further updated their evidence submitted at the Evidentiary Hearing on the Original Fee Motion vis-à-vis the B&S Supplemental Declaration and Class Counsel’s Supplemental Brief in Support of the Fee Motion on Remand.

Findings

The Court, acting both in a fiduciary capacity on behalf of the Class⁴ and as the trier of

⁴ As stated during the Evidentiary Hearing and recited in the Minute Order and Original Judgment, this Court has always recognized the Court’s fiduciary obligations to the Class and solemnly sought to honor those obligations by not only considering the short-term implications of the Court’s decisions, but also considering the long-term *continued . . .*

fact, having conducted the mandated Evidentiary Hearing on June 11, 2018; having reviewed, considered, reconsidered and taken under advisement: (1) the Original Fee Motion; (2) the Opinion; (2) the Order Approving the Settlement Term Sheet; (3) the B&S Supplemental Declaration; (4) all of the evidence and testimony presented including the filed declarations, the arguments of counsel, and all other related submissions related to the Fee Motion on Remand, and being fully advised in the premises, **FINDS, ORDERS, AND ADJUDGES** as follows:

Findings of Fact - Notice

12. On April 3, 2018, the Court preliminarily approved the settlement and approved the form and manner of the Notice for Mailing and Notice for Publication (*see* Order on Plan of Notice). After the issuance of that order, Class Counsel directed an extensive effort to mail the Court-approved Notice of Proposed Class Action Settlement (“Notice”) to all Class Members who Continental has identified as having received payment of royalties from CLR on production of oil and gas from Oklahoma wells which during the Class Period; *i.e.*, from and after July 1, 1993 and prior to February 1, 2018. The Notice provided Class Members with all information needed to fully understand the terms of the Settlement and their rights thereunder (a copy of the Notice was attached as Exhibit “A” to the “Affidavit of Markham Sherwood RE Mailing of Notice and Report on Opt Outs and Objections Received”, which was filed with Court Clerk of Blaine County. The Court previously found in the Order on Plan of Notice that the Notice “will adequately inform the members of the Settlement Class of the scope and effect of the proposed settlement between Class Representatives and Continental, as well as their rights related thereto”. *Id.* at ¶1. The Court also found “the Plan of Notice constitutes the best notice practicable under the circumstances” and

implications thereof, and balancing the same. (“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).

further found it “complies with 12 O.S. § 2023 (C)(4)... and constitutes due and sufficient due process notice for all purposes to all persons legally entitled to receive such notice”. *Id.* at ¶7. The Notice clearly informs the Class about the nature of the Litigation and the proposed Settlement, including that Class Counsel was seeking an attorneys’ fee award of up to 40% of the Sub-Class 1 and Sub-Class 2 Settlement Proceeds and directs Class Members to the location of additional information, which is easily accessible, and provides instructions for Class Members to object or opt out.⁵

13. Pursuant to the Order on Plan of Notice, Continental utilized its current and historic royalty payment decks and other sources for purposes of determining the identity of putative Class Members and their last known mailing address (“Class Member List”). Continental provided the Class Member List to Class Counsel.⁶

14. Class Counsel retained KCC Class Action Services, LLC (“KCC”), located at 3301 Kerner Boulevard, San Rafael, CA 94901, as the Notice Administrator for the Settlement. The “Affidavit of Markham Sherwood RE Mailing of Notice and Report on Opt Outs and Objections Received,” was filed with the Court Clerk of Blaine County. In his Affidavit, Mr. Sherwood testifies as follows:

3. *On or before April 4, 2018, as Notice Administrator, KCC received computerized excel spreadsheets containing the Class Member List with the last known addresses of Class Members from Class Counsel, containing 32,882 records.*
4. *On or before April 12, 2018, KCC caused the addresses in the Class Member Lists to be updated using the National Change of Address system, which updates addresses for all people who had moved during the previous four years and filed a change of address with the U.S. Postal Service. New addresses were found for 1,635 class members. The Class Member List was updated with these new addresses.*
5. *On or before April 12, 2018, KCC performed data analysis on the Class Member*

⁵ See “B&S Declaration, p. 16, ¶36.

⁶ See “B&S Declaration, p. 17, ¶37.

Lists to identify and remove records with bad or duplicate addresses. This analysis resulted in the removal of 235 records with bad or duplicate addresses.

6. *On April 17, 2018, KCC caused to be mailed by first class mail 32,647 copies of the Notice of: (1) Proposed Settlement of Class Action; (2) Motion for Attorneys' Fees and Expenses; and (3) Fairness Hearing (the "Notice"), to all the names and addresses shown on the updated class lists. A true and correct copy of the Notice is attached hereto as Exhibit A.*

....

9. *On May 1, 2018, KCC received from Class Counsel additional excel spreadsheets from Class Counsel where Defendant was able to identify a number of additional or possible Class Members. KCC aggregated the spreadsheets into one file and standardized the address formatting, de-duplicated the list first amongst the new address information and subsequently against the original Notice mailing data, resulting in 1,243 new names and addresses to be sent Notice as part of a supplemental mailing. On May 8, 2018, KCC caused to be mailed by first class mail 1,243 copies of the Notice to all of the newly identified names and addresses on the supplemental list.*
10. *As of May 30, 2018, 3,621 Notices were returned to KCC by the U.S. Postal Service without forwarding addresses. KCC researched, via skip trace, addresses for the 3,621 class members, and 2,009 new addresses were found. The Class Member List was updated with these new addresses and Notices were re-mailed to the 2,009 class members using the new addresses.*
11. *Of the total number of 33,890 Notices mailed, it is presumed that more than 95% of the Class Members on the Class Lists received the Notices. A copy of the names and addresses to whom Notice was mailed will be filed under seal with the Court Clerk of Blaine County pursuant to ¶8 of the Order on Plan of Notice.*
12. *As of the date of this affidavit, KCC has received 254 requests for exclusion from the Settlement. A report containing information regarding the requests for exclusion is attached hereto as Exhibit B. . . . Exhibit B only includes the requests for exclusions received by KCC and does not include any Opt-outs that may have only been mailed to the Court Clerk of Blaine County.*
13. *As of the date of this affidavit, KCC has received NO Objections to the Settlement and Three (3) Objections to the Request for Attorneys' Fees and Expenses. . . . and does not include any Objections that may have only been mailed to the Court Clerk of Blaine County.^[7]*

Affidavit of Markham Sherwood RE Mailing of Notice and Report on Opt Outs and Objections Received.

15. In addition, to ensure the best notice reasonably practicable under the

⁷ The Court will address the "Objections" to the attorneys' fees and expenses referenced by Mr. Sherwood below.

circumstances, the Court-approved Summary Notice was published in three (3) papers of general circulation in Oklahoma, *The Oklahoman* (published on 4/7/2018), *The Tulsa World* (published on 4/12/2018) and *The Journal Record* (published on 4/13/2018). See Affidavits of Publication filed with the Court Clerk of Blaine County on April 30, 2018.⁸

16. The Notice, along with other documents germane to the Settlement, were posted on the website created for and dedicated to this Settlement. See www.StrackvsContinental.com. This website is maintained by the Notice Administrator as a site where additional information regarding the Settlement can be found.⁹

Conclusions of Law - Notice

17. The notice effort and campaign provided the most reasonable notice practicable under the circumstances, including individual notice to all Class Members who could be identified through reasonable effort and provided the information required by 12 O.S. § 2023 (C) (4).¹⁰

18. The Court finds that notice of Class Counsel's intent to seek: (a) an award of an attorneys' fee of up to and including 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 up to and including \$400,000.00, was given to members of the Settlement Class as required by law.

19. The Court further finds that on remand, Class Counsel's and Class Representatives' agreement with McClure to accept amounts substantially less than the maximum amounts set forth in the Notice neither mandates an additional evidentiary hearing, nor requires additional notice to

⁸ See "B&S Declaration, p. 18, ¶39.

⁹ See "B&S Declaration, p. 19, ¶40 & 41.

¹⁰ See "B&S Declaration, p. 20, ¶44.

be provided the Settlement Class. Specifically, notice of the Original Fee Motion and the June 11, 2018 hearing was properly mailed by Class Counsel and the Settlement Administrator to Settlement Class Members with known valid mailing addresses and was published as required by this Court's Order on Plan of Notice. The Court previously approved such notice and now finds, orders, and adjudges the notice to the Settlement Class 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 were afforded a reasonable opportunity to object to the Original Fee Motion and participate in the Original Hearing, and that no further notice is required for this Court's consideration of the Fee Motion on Remand.

Findings of Fact - General

20. 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.

21. The Court approved the Settlement as adequate, fair and reasonable by Judgment dated June 11, 2018, which is now Final and Unappealable and is incorporated herein by reference.

22. Of the total of 33,890 putative Class Members, only three (3) expressed concerns about the Original Fee Motion. Two of those concerns were formal Objections made by McClure, which have now been fully resolved and withdrawn pursuant to the Settlement Term Sheet and the Court's Order Approving the Settlement Term Sheet. The other concern was in the form of a Comment, as that term was defined in the Notice (rather than a formal "Objection," as defined in the Notice) submitted by Bruce McLinn. Mr. McLinn neither appeared at the hearing, provided any evidence to the Court, nor filed a formal Objection pursuant to the terms of the Notice

approved by this Court.¹¹

23. Pursuant to the Settlement Term Sheet, Class Counsel have reduced the Requested Fees (see B&S Supplemental Declaration). Further, this Court will be “*ordering a reduction of compensation to the attorneys*” as required by the Settlement Term Sheet and requested by Class Counsel vis-à-vis the B&S Supplemental Declaration.

Findings of Fact – Attorneys’ Fee

Consideration of the Thirteen (13) Statutory Factors Utilized to Determine A Reasonable Attorneys Fee:

24. “*Oklahoma’s class action attorney fee statute allows for the calculation of attorney’s fees under both the percentage and lodestar methods. Section 2023(G)(1) states that a court may award reasonable attorney fees and nontaxable costs that are authorized by law or by the parties’ agreement. However, § 2023(G)(1) does not specify any particular methodology in calculating a fee award. The statute instead sets out factors that a court shall consider to assess the reasonableness of attorney’s fees. 12 O.S.Supp.2017, § 2023(G)(4)(e).*” [Emphasis added. Footnotes omitted.] Opinion, ¶16.

25. Pursuant to 12 O.S. §2023(G), in arriving at a fair and reasonable fee for class counsel, this 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

¹¹ See B&S Declaration, p. 30-31, ¶76.

(13) the risk of recovery in the litigation.

26. Extensive and detailed evidence and testimony was presented to the Court as to each of these thirteen (13) statutory factors. The Court's review and analysis of each of these thirteen (13) factors, after considering and reconsidering the evidence, authorities and other submitted materials, supports the Requested Attorneys' Fee.

Factor 1: Time and Labor Required¹²

1. Class Counsel have provided over two hundred fifty (250) pages of detailed contemporaneous time records for this Court's *in camera* review. Class Counsel have expended, and will continue to expend, substantial time and resources that have benefitted, and will continue to benefit, the Settlement Class. A recap of the hours expended, including a reasonable estimate of additional hours that will be expended in the future to complete the administration of the Settlement Fund, is summarized as follows (the rates and lodestar calculation reflected in the chart will be addressed *infra*):¹³

| Summary of Class Counsel's Detailed Time Records | | | | |
|---|-----------------|---|-----------------------------|----------------------------------|
| Attorney or Paralegal | Title | Total Hours Expended or Estimated To Be Expended | Approved Hourly Rate | "Lodestar" (Hours X Rate) |
| Douglas E. Burns | Senior Attorney | 3,939.67 | \$875 | \$3,447,211.25 |
| Terry L. Stowers | Senior Attorney | 6,526.28 | \$875 | \$5,710,495.00 |
| Kerry Caywood | Attorney | 243.60 | \$500 | \$121,800.00 |
| Angela Caywood Jones | Attorney | 19.30 | \$500 | \$9,650.00 |
| Pamela Moulton | Paralegal | 652.50 | \$275 | \$179,437.50 |
| Tammie Wheeler | Paralegal | 296.40 | \$200 | \$59,280.00 |
| | | 11,677.75 | | \$9,527,873.75 |

27. As reflected by the detailed time records submitted for the Court's *in camera*

¹² See B&S Declaration, p.36-37, ¶86-88; and B&S Supplemental Declaration.

¹³ See B&S Supplemental Declaration, ¶6.

review, as summarized and reflected in the table, Class Counsel have expended, or will expend, over 11,677.75 hours, which have benefitted, and will continue to benefit, the Settlement Class, not only through Sub-Class 1 and Sub-Class 2 Settlement Proceeds, but also through the Future Benefits estimated to be worth at least \$50 million.

28. Class Counsel have expended many uncompensated hours in filing Amicus Curiae Briefs in other cases and monitoring and lobbying the legislature in order to protect Oklahoma's royalty owners, specifically the Class Members of this case.¹⁴

29. In addition to the hours already expended, Class Counsel have and will continue to dedicate substantial time and effort on behalf of the Settlement Class to get the Settlement implemented and distributed; a reasonable estimate of that additional time is included in the summary set forth above.

30. Class Counsel has expended considerable time and talent in advancing the claims of the Settlement Class in this matter and, as a result of this substantial time and labor expenditure, Class Counsel obtained a substantial and meaningful recovery for the Settlement Class, both in the form of money for past damages and binding future benefits.

31. In addition to time and effort, Counsel had 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.¹⁵

32. The Court's review and analysis of the time and labor expended, and that will continue to be expended, in prosecuting this Litigation and implementing the Settlement supports awarding the Requested Attorneys' Fee.

¹⁴ See Minute Order, p. 3; B&S Declaration, p. 37, ¶86.

¹⁵ See Minute Order, p. 3.

Factor 2: The Novelty and Difficulty of the Questions Presented by the Litigation¹⁶

33. When Class Counsel agreed to take on this Litigation, there were many disagreements between Class Representatives and Continental regarding Oklahoma oil and gas law that affected the Settlement Class' claims, as set out in detail in the Amended Petition. Disagreements abounded between the Parties regarding, among other things, Continental's duty to bear the full costs for marketing, gathering, compression, dehydration, processing, treatment, and other similar services to place the gas from the Class wells in a marketable condition, Continental's duty to pay royalty on gas used off the lease premises to run equipment in gathering systems and gas plants under the express terms of the Class Members' leases, whether Continental paid royalty on the best price available for the gas and oil, Continental's duty to pay royalty on skim oil produced from class wells but recovered at offsite salt water disposal or reclamation facilities and whether such issues are appropriate for determination on a class-wide basis. These issues go to the heart of the Settlement Class' claims, and the Parties still maintain differing views. Even if the Court ruled in favor of the Settlement Class on these legal issues, the Parties would have inevitably disputed the nature and amount of the damages.¹⁷

34. A number of the novel and difficult questions presented by the Litigation were summarized in Plaintiffs' Amended Motion for Class Certification. Those novel and difficult questions included:

I. Issues Related to the Production Revenue Standards Act, 52 O.S. §570.1, et seq. ("PRSA"), and Other Recent Legislative Enactments, Evidencing Oklahoma's Public Policy and General Rules of Conduct for the Oil and Gas Industry.

A. Are CLR's duties, obligations and conduct *vis-à-vis* its royalty owners subject to, and governed by, the overarching public policy and general rules of conduct as embodied within the PRSA and other related legislative enactments, e.g., the

¹⁶ See B&S Declaration, p.38-44, ¶89-90; Gum, Tr. p. 179, l. 10-12 ("Were there novel and difficult questions presented? A Yes.").

¹⁷ See, B&S Declaration, p. 38-39, ¶89.

Conservation Act (52 O.S. §86.1, *et seq.*); the Oil & Gas Owners' Lien Act of 2010 (52 O.S. §549.1, *et seq.*); and the Energy Litigation Reform Act (52 O.S. §901, *et seq.*)?

1. Does the PRSA, as recently supplemented by the Oil & Gas Owners' Lien Act and the Energy Litigation Reform Act, represent part of a comprehensive regulatory scheme enacted by and through the police powers of the State of Oklahoma, setting out the general rules of conduct for the oil and gas industry in respect of the payment of proceeds of production from oil and gas wells in Oklahoma?

2. Was the PRSA designed specifically to protect a broad societal interest in the correlative rights of the owners of that production and the proceeds and revenue therefrom?

3. Does the public policy in Oklahoma, as embodied in the PRSA provisions, apply to CLR and all its royalty owners in all CLR wells in Oklahoma, regardless of the date pooled by the Oklahoma Corporation Commission, the date the well was drilled by CLR or the date or terms of the underlying oil and gas leases?

4. Pursuant to Oklahoma's public policy and general rules of conduct, as the operator of CLR wells, under what legal standards is CLR's conduct vis-à-vis its royalty owners to be measured?

a. As operator of CLR wells, does CLR operate the well on behalf of all owners in the well, including its royalty owners?

b. As operator of CLR wells, when performing any duties owed to its royalty owners relating to: (1) the exploration for oil or gas; (2) the operations of the wells; (3) producing oil and gas from the wells; (4) marketing oil or gas from the wells; or (5) disbursing proceeds of production of oil or gas from the wells, is CLR required to perform its duties with due regard to the interests of all affected parties?

c. As operator of CLR wells, does CLR have a duty to market oil and gas production from the wells at the best price and terms reasonably available?

d. As a result of CLR's relationship with its royalty owners and as operator of CLR wells, is CLR (1) held accountable to its royalty owners, (2) held to a high degree of good-faith in its dealings, and (3) not permitted to make use of the relationship to realize unauthorized benefits or profits for its own interests at the expense of its royalty owners?

e. As a result of CLR's relationship with its royalty owners and as operator of CLR wells, does CLR have a duty of candor, the obligation of good faith and the duty of fair dealing, in the performance of its express and implied obligations owed to its royalty owners?

B. Does the public policy in Oklahoma, as embodied in the PRSA, involve a regulatory scheme wherein CLR:

(i) is the holder of the royalty share of the revenue or proceeds of oil and gas production from CLR wells;

(ii) has no rights in or to the royalty share of the revenue or proceeds from the CLR wells;

(iii) is under a statutory duty to account for and pay the royalty share of the revenue or proceeds of oil and gas production from the CLR wells to its royalty owners; and

(iv) acquires no right, title or interest in the royalty share of the revenue or proceeds of oil and gas production from the CLR wells?

C. Does the public policy in Oklahoma, as embodied in the PRSA and other legislative enactments, give CLR's royalty owners a right to be accurately informed of the facts, and place a legal duty on CLR to accurately inform its royalty owners of the facts, on which the royalty payments are based, including an accurate accounting for all production and proceeds or revenue from the sale or other disposition of the production attributed to the CLR wells?

D. Does the public policy in Oklahoma, as embodied in the PRSA, require that CLR's royalty owners receive prompt payment for their royalty share of all proceeds and revenue from the sale of oil and gas production from CLR's wells?

1. Is CLR liable, as a matter of law (specifically, 52 O.S. § 570.10), to CLR's royalty owners for 12% interest (or 6% interest if title to the mineral interest was not marketable), compounded annually, together with all resulting costs or damages, where the royalty owner's proceeds were paid incorrectly as a result of an error or omission by CLR?

E. Would the term "production", as defined by the PRSA (i.e., "the physical act of severance of oil and gas from a well by an owner and includes but is not limited to the sale or other disposition thereof" 52 O.S. §570.2(2)), include in part:

As to Oil

(i) oil (including condensate) produced from a CLR operated wellbore which is separated and saved at the lease location;

(ii) oil produced from a CLR operated wellbore which is commingled with produced saltwater from the CLR wellbore (i.e., "skim oil") (and then commingled with saltwater and oil produced from other CLR wells or non-CLR wells) and separated, saved and sold by CLR at an off-lease saltwater disposal well or central treating unit owned and/or operated by CLR, or one of CLR's affiliates;

As to Gas

(iii) gas produced from a CLR operated wellbore which is commingled with other gas from other CLR wells or non-CLR wells connected to a gathering system owned or operated by a non-CLR affiliated entity where CLR sold

the gas to a non-CLR affiliated purchaser and received consideration thereon on a basis prior to the residue gas and NGLs being separated, saved and sold as separate products by a non-CLR affiliated entity;

(iv) gas produced from a CLR operated wellbore which is commingled with other gas from other CLR wells or non-CLR wells and consumed, utilized or retained by a gathering system (*i.e.*, “field fuel”) owned or operated by a non-CLR affiliated entity;

(v) gas produced from a CLR operated wellbore which is commingled with other gas from other CLR wells or non-CLR wells and consumed, utilized or retained by a gathering system (*i.e.*, “field fuel”) owned or operated by CLR, or one of CLR’s affiliates;

(vi) gas or gas condensate in the form of “slop oil” or “scrubber oil” produced from a CLR operated wellbore which is commingled with other gas or gas condensate from other CLR wells or non-CLR wells connected to a gathering system owned or operated by a non-CLR affiliated entity, where such slop oil or scrubber oil was collected, saved and sold by the non-CLR affiliated entity, with a portion of revenues therefrom paid to CLR, or one of CLR’s affiliates;

(vii) gas or gas condensate in the form of “slop oil” or “scrubber oil” produced from a CLR operated wellbore which is commingled with other gas or gas condensate from other CLR wells or non-CLR wells connected to a gathering system owned or operated by CLR, or one of CLR’s affiliates, where such slop oil or scrubber oil was collected, saved and sold by CLR, or one of CLR’s affiliates;

(viii) gas produced from a CLR operated wellbore which is commingled with other gas from other CLR wells or non-CLR wells and consumed, utilized or retained by a processing plant (*i.e.*, “plant fuel”) owned or operated by a non-CLR affiliated entity wherein a portion of revenues from the sale of the residue gas or natural gas liquids (“NGLs”) separated therein are paid to CLR, or one of CLR’s affiliates;

(ix) gas produced from a CLR operated wellbore which is commingled with other gas from other CLR wells or non-CLR wells and consumed, utilized or retained by a processing plant (*i.e.*, “plant fuel”) owned or operated by CLR, or one of CLR’s affiliates;

(x) gas and NGLs produced from a CLR operated wellbore which is commingled with other gas or NGLs from other CLR wells or non-CLR wells connected to a processing plant owned or operated by a non-CLR affiliated entity where such NGLs were separated, saved and sold, with a portion of revenues therefrom paid to CLR, or one of CLR’s affiliates;

(xi) gas and NGLs produced from a CLR operated wellbore which is commingled with other gas or NGLs from other CLR wells or non-CLR wells connected to a processing plant owned or operated by CLR, or one of CLR’s affiliates, where such NGLs were separated, saved and sold by CLR,

or one of CLR's affiliates;

(xii) gas produced from a CLR operated wellbore which is commingled with other gas from other CLR wells or non-CLR wells connected to a processing plant owned or operated by a non-CLR affiliated entity where such gas was separated, saved and sold as "residue gas", with a portion of revenues therefrom paid to CLR, or one of CLR's affiliates; or

(xiii) gas produced from a CLR operated wellbore which is commingled with other gas from other CLR wells or non-CLR wells connected to a processing plant owned or operated by CLR, or one of CLR's affiliates, where such gas was separated, saved and sold as "residue gas" by CLR, or one of CLR's affiliates?

F. Would the term "proceeds", as referenced throughout the PRSA, include all consideration received by CLR, or one of CLR's affiliates, upon, or as a consequence of, the sale or other disposition of the "production", as defined by the PRSA, 52 O.S. §570.2(2), including but not limited to the oil and gas production identified and enumerated in subparagraphs I.E.(i) through (xiii) above?

1. Would "consideration" include the economic value of services performed on behalf of CLR, either by one of CLR's affiliates or a non-CLR affiliated entity, as a consequence of the sale or other disposition of the production, including but not limited to gathering, compression, dehydration, field fuel, treating, and processing?

2. Would "consideration" include the economic value of contractual rights to receive barrels of oil at a market center (e.g., Cushing) received by CLR, or one of CLR's affiliates, as a consequence of, or as part of the terms of, the sale or other disposition of oil from the CLR wells by CLR, or one of CLR's affiliates?

II. Issues involving CLR Transactions with CLR-Affiliated Entities.

A. Is an affiliated or intra-company transaction to be collapsed, disregarded or ignored for the purpose of calculating "royalty proceeds" pursuant to the PRSA (52 O.S. §570.2(8))?

1. If CLR is calculating royalty proceeds on one price, but on resale, a related entity is obtaining a higher price, are the royalty owners entitled to their royalty share of the higher price?

2. Is the key to collapsing, disregarding or ignoring an affiliated transaction for determining royalty proceeds the common control of the two entities?

III. Issues Related to Marketable Product and the Implied Duty to Market.

A. What is the legal definition of a "marketable" product in relation to the sale or disposition of natural gas?

B. As a matter of law or custom or usage of in the industry, are the terms "marketable", "merchantable" and "pipeline quality" interchangeable in relation to the sale or disposition of gas?

C. As a matter of law, do royalty owners have a right to be paid for oil and gas production on the best price and terms reasonably available to the producer?

D. Is a contract entered into by an operator to sell, deliver or otherwise dispose of oil at a market center (*i.e.*, Cushing), evidence the trier-of-fact may consider in determining whether the operator in fact sold oil from a well on the best price and terms reasonably available to the operator?

E. As a matter of law, does every oil and gas lease include a “duty to market” (also called the “implied covenant to market”), unless (and only to the extent) modified by specific, express lease language allowing deductions to make the product marketable.

F. As a matter of public policy, expressed by legislative enactment effective May 8, 2012, do pooling orders entered by the Oklahoma Corporation Commission on or after May 8, 2012 contain an implied covenant to market.

G. As a matter of public policy, does an operator who invoked the police power of the State of Oklahoma *vis-à-vis* a force pooling action at the Oklahoma Corporation Commission, prior to May 8, 2012, owe a pooled royalty owner an obligation to create a marketable product from the production obtained from the pooled interest, and to market the production therefrom, for the best price and terms reasonably available?

H. As a matter of law, absent a provision negating the implied covenant to market and expressly providing otherwise, is an oil and gas lessee or operator prohibited from deducting, either directly or indirectly, a proportionate share of gathering, compression, dehydration, field fuel, treating, and processing costs when such costs are associated with creating a marketable product?

I. As a matter of law, is there a rebuttable presumption in favor of the royalty owner, and against the producer, prohibiting deductions being made from the royalty owners’ proceeds and revenues and is the burden placed upon the producer to rebut that presumption before any deduction can be made?

J. As a matter of law, if the CLR intentionally mingled production from a CLR well with production from another CLR well or non-CLR well, and CLR cannot reasonably establish the volume of production attributable to each well, is CLR held liable to the owners of each well for the entire volume of production so mingled under the commingling rule?

K. As a matter of law, as the operator of CLR wells, is CLR, or one of CLR’s affiliates, entitled to reap a profit at the expense of CLR’s royalty owners?

L. As a matter of law, as the operator of CLR wells, is CLR, or one of CLR’s affiliates, ever entitled to recover or deduct expenses from CLR’s royalty owners for any purpose in an amount that exceeds actual costs, without allowance for any profit thereon?

IV. Injunctive and/or Mandamus Relief for a Proper Accounting.

Are Strack and CLR’s royalty owners entitled to the requested relief sought in the form of injunctive and/or mandamus relief pursuant to 12 O.S. §1381, *et. seq.* and

§1451, *et. seq.*, requiring CLR to properly account to its royalty owners for all production and proceeds attributable to the CLR wells and to accurately inform its royalty owners of the facts on which their royalties were based?

Amended Motion for Class Certification, p. 6-13.¹⁸

35. 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.¹⁹

36. 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.²⁰

37. The Court's review and analysis of the novelty and difficulty of the questions presented by the litigation supports awarding the Requested Attorneys' Fee.

Factor 3: The Skill Required to Perform the Legal Service Properly²¹

38. *“Class counsel in this case performed highly specialized legal services.”* Opinion,

¹⁸ See, B&S Declaration, p. 39-44, ¶90.

¹⁹ See Minute Order, p. 3; Gum, Tr. p. 186 (“[W]hen I first got involved in doing these cases as a plaintiff I was in another old law firm that embarked into some of these cases. The cost of carrying these cases for years and years and paying the expert bill as you go, advancing it, and having all your lawyers billing into a file that doesn't generate any cash. It brought my old law firm to an end. It got to the point in that firm that the junior partners couldn't make their cash draws. And that's the kind of extreme pressure that these kind of cases put on lawyers and I don't think this case is any different.”)

²⁰ See Minute Order, p. 3.

²¹ See B&S Declaration, p. 44, ¶91-94.

¶22, fn. 10.

39. 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.²² See Factor 2, The Novelty and Difficulty of the Questions Presented by the Litigation, which is incorporated into the Court analysis of this factor.

40. Continental is a large, well-funded Defendant represented by very competent counsel with large supporting staffs. 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,²³ and that is a complement appearing to be well earned.²⁴

41. The Court's review and analysis of the skill required to perform the legal services properly supports awarding the Requested Attorneys' Fee.

Factor 4: The Preclusion of Other Employment by the Attorney Due to Acceptance of the Case

42. Class Counsel have dedicated their time, labor, and resources to successfully litigating and resolving this Litigation. As a result of the incredible amount of time required to be spent on this case, each firm (but primarily B&S) has had to forego other work. As described in

²² See Minute Order, p. 3.

²³ See Testimony of Robert Gum, Tr. p. 50.

²⁴ See Minute Order, p. 3.

the B&S Declaration, History of the Litigation, Class Counsel litigated the case against Continental for over seven (7) years. Class Counsel have already worked on Settlement administration for three (3) additional years since the Settlement was approved. Furthermore, Class Counsel will continue working to fully implement and finalize the Settlement over the next two (2) years. Throughout this time (over ten years so far since the case was filed), Class Counsel have represented the Class on a wholly contingent basis without any compensation, advancing considerable expenses in the process.²⁵

43. 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, specifically B&S, from spending significant time on other matters.²⁶

44. The Court's review and analysis of the preclusion of other employment by Class Counsel due to acceptance of this case supports awarding the Requested Attorneys' Fee.

Factor 5: The Customary Fee

45. The prevailing customary fee in these types of royalty owner class actions in Oklahoma is a contingent fee calculated as a percentage of the common fund. As the Honorable Joseph M. Watt, a former Oklahoma Supreme Court Justice, recently testified in similar royalty owner class action:

The percentage approach squarely aligns the interests of both client and counsel, encouraging attorneys to secure the best result possible as efficiently as possible, and thereby eliminates the ills of fee churning and unnecessarily protracted litigation that so often mar the perception of class actions. The percentage approach also promotes judicial efficiency, allowing courts—at every level—to do the work of judges rather than of billing auditors. Thus, in my opinion, so long as the court examines the facts of each case according to the factors provided in 12 O.S. §2023(G)(4)(e), it is free to phrase its ultimate conclusion in terms of a percentage of the recovery—particularly where such a percentage has objective

²⁵ See B&S Declaration, p. 45, ¶95.

²⁶ See Minute Order, p. 4.

support in the form of a prior contingency-fee contract that represents the market rate for the legal services provided. [Emphasis added. Footnotes omitted.]²⁷

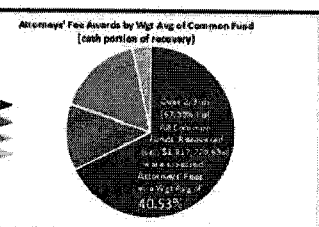
Similarly, in another royalty owner class action involving royalty underpayments with a settlement fund of \$147,000,000, the Honorable Steven W. Taylor, another former Oklahoma Supreme Court Justice, testified that “I believe that a percentage of the recovery is the best method for determining an appropriate attorney fee in this case.” [Emphasis added.]²⁸

46. These types of cases are never taken on an hourly basis.²⁹

COSMO’s Oklahoma Oil & Gas Specific Survey (1996-2018):

47. The Coalition of Oklahoma Surface and Mineral Owners (COSMO), of which Class Counsel, Terry L. Stowers is the Executive Director, researches and tracks settlements of oil and gas class actions, including awards of attorneys’ fees, litigation expenses, class representative contribution awards, and similar data. Class Counsel introduced a three (3) page report titled “Summary of 20+ Years of Oil and Gas Class Actions in Oklahoma (Both State and Federal Courts)” (“COSMO’s Class Action Tracking Report”). COSMO’s Class Action Tracking Report is reproduced herein (“Common Fund” = “Cash” Portion of the Settlement):

| Range of Attorney Fee Awards in Oklahoma O&G Class Actions as a Percentage of the “Common Fund” (Cash Only) | # of Cases | “Common Fund” (Cash Portion only) | Wgt Avg % of Total Reported Cash Common Funds | Total Recovery for the Class | Wgt Avg Atty Fee |
|---|------------|-----------------------------------|---|------------------------------|------------------|
| Attorneys’ Fee ≥ 40% | 30 | \$1,108,237,553 | 67.55% | \$1,317,775,653 | 40.53% |
| 35% ≤ Attorneys’ Fee < 40% | 6 | \$205,511,379 | 12.53% | \$221,942,770 | 37.28% |
| 30% ≤ Attorneys’ Fee < 35% | 14 | \$267,974,678 | 16.33% | \$281,984,441 | 31.96% |
| Attorneys’ Fee < 30% | 6 | \$58,847,500 | 3.59% | \$59,192,500 | 24.45% |
| Total Completed O&G Class Actions | 56 | \$1,640,571,110 | 100.00% | \$1,880,875,364 | 38.15% |
| Additional O&G Class Actions Pending Final Approval | 3 | \$248,000,000 | | \$374,265,000 | |
| Total of All Reported O&G Class Actions | 59 | \$1,888,571,110 | | \$2,255,140,364 | |



²⁷ Appellants’ Reply Brief (4/15/2019), p. 20-21, Supplemental Appendix 4, Declaration of Joseph M. Watt, Chieftain v. Enervest, Case No. CIV-11-177D, U.S.W.D.OK, 8/17/2018), p. 14-15, ¶25.

²⁸ Appellants’ Reply Brief (4/15/2019), p. 20-21, Supplemental Appendix 3, Declaration of Steven W. Taylor, Cecil v. BP America, Case No. 16-CV-410, U.S.E.D.OK, 10/19/2018), p. 5, ¶12.

²⁹ See Minute Order, p. 4; Gum, Tr. p. 191, l. 23-25 (“Q: In your experience are royalty payment class actions ever done on an hourly rate basis? A: Not in my experience.”); Hetherington, Tr. p. 238, l. 18-21 (“Q: In your experience do oil and gas royalty underpayment class action cases ever get done on an hourly rate basis? A: No, sir.”)

| Case Identification | | | | | The "Common Fund" and Class Recovery | | | Percentage of "Common Fund" (Cash Only) Awarded | | | | | |
|---------------------|--------------------------------------|-------------------------|------------------------------|---------------|--------------------------------------|--------------------------------|------------------------------|---|---------------------------------|-------------------|------------------------------|-------------------|-----------------------------|
| Ex # | Case Name | Judge | Case No. & Court | Year Resolved | "Common Fund" (Cash Portion only) | Other Benefits to the Class | Total Recovery for the Class | Attorneys' Fee | Lode Star Multiplier (if known) | Litigation Costs | Admin Costs from Fund | Class Rep. Fee | Total Award of Fees & Costs |
| Pending | <i>Cecil v BP America</i> | Ronald White | CIV-16-410-W USED OK | 2018 | \$147,000,000 | \$65,000,000 | \$212,000,000 | TBD | TBD | TBD | TBD | TBD | TBD |
| Pending | <i>Strack v Continental</i> | Dennis Hladik | CJ-2010-75 Blaine Co | 2018 | \$49,800,000 | \$57,500,000 | \$107,300,000 | TBD | TBD | TBD | TBD | TBD | TBD |
| 32 | <i>Chieftain v EnerVest</i> | Timothy DeGiusti | CIV-11-177-D USWD OK | 2015 | \$52,000,000 | \$2,965,000 | \$54,965,000 | Pending on Remand | Pending on Remand | Pending on Remand | Pending on Remand | Pending on Remand | Pending on Remand |
| 54 | <i>Tatum v. Devon</i> | Carl Gibson | CJ-2010-77 Nowata Co | 2013 | \$3,800,000 | N/A | \$3,800,000 | 45.00% | Unreported | 0.80% | Undetermined | 0.13% | 45.93% |
| 53 | <i>Gregory v El Paso</i> | Richard B. Darby | CJ-2000-92 Wachita Co | 2001 | \$629,000 | N/A | \$629,000 | 45.00% | Unreported | 4.77% | Undetermined | 5.00% | 54.80% |
| 28 | <i>Bank of America v El Paso</i> | Christopher Kelly | CJ-2004-45 Washita Co | 2017 | \$115,000,000 | \$12,662,100 | \$127,662,100 | 44.39% | 3.12 | 1.26% | 0.58% | 0.26% | 46.50% |
| 8 | <i>Kouns v. ConocoPhillips</i> | Ray Dean Linder | CJ-1998-61 Dewey Co | 2004 | \$4,300,000 | \$1,086,000 | \$5,386,000 | 42.56% | Unreported | 3.02% | Undetermined | 0.47% | 46.04% |
| 47 | <i>Naylor Farms v. QEP</i> | David Russell | CIV-08-668-R USWD OK | 2012 | \$1,845,000 | N/A | \$1,845,000 | 41.73% | Unreported | 10.84% | 1.36% | 2.71% | 56.64% |
| 36 | <i>Chieftain v. QEP</i> | David Russell | CIV-09-07-R | 2013 | \$115,000,000 | \$40,000,000 | \$155,000,000 | 40.43% | Unreported | 0.92% | Undetermined | 0.67% | 42.03% |
| 31 | <i>Fitzgerald v Chesapeake</i> | Jon Parsley | CJ-2010-38 Beaver CO | 2015 | \$119,000,000 | Admin Exp to be paid by CRB | \$119,000,000 | 40.00% | 4.76 | 0.26% | 0.00% | 0.30% | 40.56% |
| 11 | <i>Mayo v. Kaiser-Francis</i> | Richard Van Dyck | CJ-1993-348 Grady Co | 2004 | \$5,000,000 | N/A | \$5,000,000 | 40.00% | Unreported | 0.60% | Undetermined | 0.00% | 40.60% |
| 22 | <i>Lobo v. BP (WI)</i> | Gerald Riffe | CJ-19-97-72 Beaver Co | 2005 | \$150,000,000 | N/A | \$150,000,000 | 40.00% | 8.70 | 0.41% | Undetermined | 0.50% | 40.91% |
| 24 | <i>Mitchusson v. Exco</i> | Wyatt Hill | CJ-2010-32 Caddo, Co | 2012 | \$23,500,000 | N/A | \$23,500,000 | 40.00% | 6.30 | 0.41% | Undetermined | 0.64% | 41.04% |
| 5 | <i>Robertson/Taylor v. Sanguine</i> | Richard Van Dyck | CJ-2002-150 Grady Co | 2003 | \$13,250,606 | N/A | \$13,250,606 | 40.00% | 10.00 | 0.08% | Undetermined | 1.00% | 41.08% |
| 2 | <i>Continental v. Conoco (WI)</i> | Richard Perry | CJ-2000-356 Garfield Co | 2005 | \$23,000,000 | N/A | \$23,000,000 | 40.00% | 3.65 | 0.74% | Undetermined | 0.50% | 41.24% |
| 1 | <i>Simmons v. Anadarko</i> | Wyatt Hill | CJ-2004-57 Caddo Co | 2008 | \$155,000,000 | N/A | \$155,000,000 | 40.00% | 4.20 | 0.53% | 0.65% | 0.50% | 41.67% |
| 34 | <i>Drummond v Range</i> | Richard Van Dyck | CJ-2010-510 Grady Co | 2013 | \$87,000,000 | N/A | \$87,000,000 | 40.00% | Unreported | 0.74% | Undetermined | 1.00% | 41.74% |
| 23 | <i>Sacket v. Great Plains</i> | Ray Dean Linder | CJ-2002-70 Woods Co | 2009 | \$25,000,000 | N/A | \$25,000,000 | 40.00% | 3.20 | 1.30% | Undetermined | 0.70% | 42.00% |
| 35 | <i>Cecil v Ward</i> | Wyatt Hill | CJ-2010-462 Grady Co | 2014 | \$10,000,000 | N/A | \$10,000,000 | 40.00% | Unreported | 1.30% | Undetermined | 1.00% | 42.30% |
| 37 | <i>Cornett v Samson</i> | Ray Dean Linder | CJ-2009-81 Dewey Co | 2013 | \$15,200,000 | 1/2 of Admin paid by Samson | \$15,200,000 | 40.00% | Unreported | 1.78% | 1/2 of Admin Costs | 1.00% | 42.78% |
| 27 | <i>Reidson v XTO</i> | Kimberly West | CIV-16-87-KW USED OK | 2018 | \$20,000,000 | \$20,750,000 | \$40,750,000 | 40.00% | 2.55 | 1.12% | 1.75% | 0.15% | 43.02% |
| 38 | <i>DSR Investments v Devon</i> | Ray Dean Linder | CJ-2011-12 Dewey Co | 2013 | \$11,000,000 | \$40,000 | \$11,040,000 | 40.00% | Unreported | 2.12% | 0.00% | 1.00% | 43.12% |
| 21 | <i>Lavery v. Newfield</i> | Greg Zigler | CJ-2002-101 Beaver Co | 2007 | \$17,250,000 | \$250,000 | \$17,500,000 | 40.00% | 4.22 | 2.92% | Undetermined | 0.40% | 43.32% |
| 25 | <i>Brown v. Citation</i> | Richard Van Dyck | CJ-2004-217 Caddo Co | 2009 | \$5,250,000 | N/A | \$5,250,000 | 40.00% | 1.31 | 2.44% | Undetermined | 1.00% | 43.44% |
| 9 | <i>McIntosh v. Questar</i> | N. Vinson Barefoot | CJ-2002-22 Major Co | 2002 | \$1,500,000 | N/A | \$1,500,000 | 40.00% | Unreported | 3.20% | Undetermined | 0.33% | 43.54% |
| 6 | <i>Rudman v Texaco</i> | William C. Hetherington | CJ-1997-1-E Stephens Co | 2001 | \$25,000,000 | N/A | \$25,000,000 | 40.00% | Unreported | 3.27% | Undetermined | 1.00% | 44.27% |
| 26 | <i>Chieftain v XTO</i> | Kimberly West | CIV-11-29-KW USED OK | 2018 | \$80,000,000 | \$134,750,000 | \$214,750,000 | 40.00% | 2.58 | 2.07% | 1.99% | 0.28% | 44.34% |
| *See Court Clerk | <i>Holcomb v Chesapeake</i> | Doug Haught | CJ-2011-6 Roger Mills Co | 2013 | \$2,000,000 | N/A | \$2,000,000 | 40.00% | Unreported | 3.90% | Undetermined | 0.50% | 44.40% |
| 49 | <i>Krug v. Helmerich & Payne</i> | Jefferson Sellers | CJ-98-06012 Tulsa Co | 2014 | \$15,760,949 | N/A | \$15,760,949 | 40.00% | Unreported | 3.92% | Undetermined | 1.00% | 44.92% |
| 41 | <i>Velma v. ChevronTexaco</i> | Allan McCall | CJ-2005-496 Stephens Co | 2007 | \$27,000,000 | N/A | \$27,000,000 | 40.00% | 2.49 | 4.95% | Undetermined | 1.00% | 45.95% |
| 40 | <i>Taylor v. Texaco</i> | Gerald Riffe | CJ-2002-104 Texas Co | 2011 | 12,000,000 | Admin Exp to be paid by Texaco | 12,000,000 | 40.00% | 1.76 | 5.00% | 0.00% | 1.00% | 46.00% |
| 30 | <i>Chieftain v Laredo</i> | Timothy DeGiusti | CIV-12-1319-D USWD OK | 2015 | \$6,651,998 | Undetermined | \$6,651,998 | 40.00% | Unreported | 5.26% | 0.00% | 1.00% | 46.26% |
| 29 | <i>Mahaffey v Marathon</i> | Ken Graham | CJ-2004-581E Stephens Co | 2016 | \$18,300,000 | Undetermined | \$18,300,000 | 40.00% | Unreported | 6.70% | 1.64% | 0.22% | 48.56% |
| 39 | <i>Webber v. Mobil</i> | F. Pat Fersitet | CJ-2001-53 Custer Co | 2012 | \$30,000,000 | \$750,000 | \$30,750,000 | 39.12% | Unreported | 2.21% | 0.00% | 0.50% | 41.83% |
| 44 | <i>Hill v. Kaiser-Francis</i> | David Russell | CIV-09-07-R USWD OK | 2013 | \$37,000,000 | \$3,091,391 | \$40,091,391 | 37.92% | Unreported | 2.69% | 0.35% | 0.54% | 41.50% |
| 3 | <i>Brumley v. ConocoPhillips</i> | Greg Zigler | CJ-2001-5 Texas Co | 2005 | \$29,261,379 | \$7,590,000 | \$36,851,379 | 37.91% | 3.85 | 3.12% | Undetermined | 1.13% | 42.16% |
| 20 | <i>Bank of Amer. v Burlington</i> | Ellis Cabanis | CJ-1997-68 Washita Co | 2006 | \$66,000,000 | N/A | \$66,000,000 | 37.00% | Unreported | 2.56% | 0.63% | 0.34% | 40.53% |
| 42 | <i>Fankouser v. XTO</i> | Tim Leonard | CIV-07-798-L USWD OK | 2012 | \$37,000,000 | \$5,000,000 | \$42,000,000 | 35.53% | Unreported | 0.81% | Undetermined | 0.27% | 36.61% |
| 7 | <i>Fazekas v. Arco</i> | Bill Welch | C-1998-65 Laluner Co | 2002 | \$6,250,000 | N/A | \$6,250,000 | 35.00% | Unreported | 10.00% | Included in Litigation Costs | 6.40% | 51.40% |
| 12 | <i>Velma-Alma v. Chesapeake</i> | Joe H. Enos | CJ-2002-331-E Stephens Co | 2004 | \$10,500,000 | \$6,600,000 | \$17,100,000 | 34.95% | 3.25 | 3.05% | Undetermined | 2.00% | 40.00% |
| 51 | <i>Booth v. Cross Timbers</i> | Ray Dean Linder | CJ-1998-16 Dewey Co | 2003 | \$2,500,000 | N/A | \$2,500,000 | 33.42% | Unreported | 1.63% | Undetermined | 0.36% | 35.41% |

| Case Identification | | | | | The "Common Fund" and Class Recovery | | | Percentage of "Common Fund" (Cash Only) Awarded | | | | | |
|---|----------------------------------|-----------------------|---------------------------|---------------|--------------------------------------|-----------------------------|------------------------------|---|---------------------------------|------------------|-----------------------|----------------|-----------------------------|
| Ex # | Case Name | Judge | Case No. & Court | Year Resolved | "Common Fund" (Cash Portion only) | Other Benefits to the Class | Total Recovery for the Class | Attorneys' Fee | Lode Star Multiplier (if known) | Litigation Costs | Admin Costs from Fund | Class Rep. Fee | Total Award of Fees & Costs |
| 45 | Hitch v. Cimarex | Lee West | CIV-11-13-W USWD OK | 2013 | \$16,400,000 | N/A | \$16,400,000 | 33.33% | Unreported | 0.40% | Undetermined | 1.00% | 34.74% |
| 56 | Kouns v. Louis Dreyfus | Robert Collier | CJ-98-20 Dewey Co | 2003 | \$2,778,125 | N/A | \$2,778,125 | 33.33% | Unreported | 1.30% | Undetermined | 0.43% | 35.06% |
| 43 | Hill v. Marathon | David Russell | CIV-08-37-R USWD OK | 2012 | \$40,000,000 | \$7,409,763 | \$47,409,763 | 33.33% | Unreported | 1.02% | Undetermined | 0.25% | 34.60% |
| 14 | Barnaby v. Marathon | Bill Welch | C-1996-40 Latimer Co | 2003 | \$3,645,241 | N/A | \$3,645,241 | 33.33% | Unreported | 1.85% | Undetermined | 0.33% | 35.51% |
| 55 | Lawrence v. Cimarex | Richard Van Dyck | CJ-2004-391 Caddo Co | 2006 | \$6,475,000 | N/A | \$6,475,000 | 33.33% | Unreported | 2.11% | Undetermined | 0.39% | 35.83% |
| 19 | Duke v. Apache | Joe Jackson | CJ-1994-32 Dewey Co | 2002 | \$1,967,500 | N/A | \$1,967,500 | 33.33% | Unreported | 3.43% | 0.26% | 0.00% | 37.02% |
| 13 | Shockey v. Chevron | Ellis Cabanis | CJ-2001-7 Washita Co | 2005 | \$60,000,000 | N/A | \$60,000,000 | 33.33% | 4.66 | 3.19% | 0.83% | 0.42% | 37.77% |
| 18 | Kouns v. Kaiser-Francis | Ray Dean Linder | CJ-1998-45 Dewey Co | 2003 | \$3,100,000 | N/A | \$3,100,000 | 33.33% | Unreported | 1.61% | 8.06% | 0.39% | 43.39% |
| 10 | Black Hawk v. Exxon (W&RO) | Deborah C. Shallcross | CJ-93-02226 Tulsa Co | 1999 | \$9,000,000 | N/A | \$9,000,000 | 31.80% | Unreported | 1.82% | 3.30% | 3.72% | 40.65% |
| 17 | Gregg v. Barrett | Edward Cunningham | CJ-1996-166-1 Canadian Co | 1996 | \$180,000 | N/A | \$180,000 | 30.00% | Unreported | Undetermined | Undetermined | 0.00% | 30.00% |
| 15 | Duke v. Samson | Robert Collier | CJ-1994-31 Dewey Co | 1996 | \$1,454,375 | N/A | \$1,454,375 | 30.00% | Unreported | 0.21% | Undetermined | 0.00% | 30.21% |
| 4 | Bridenstine v. Kaiser-Fr. | Ronald Kincaannon | CJ-2000-1 Texas Co | 2004 | \$109,974,437 | Undetermined | \$109,974,437 | 30.00% | 5.25 | 2.63% | 0.45% | 0.81% | 33.89% |
| 16 | Cactus Petrol. V. Chesapeake (W) | Greg Zigler | CJ-2004-4 Harper Co | 2005 | \$6,500,000 | N/A | \$6,500,000 | 26.36% | 1.70 | 3.29% | Undetermined | 0.35% | 30.00% |
| 33 | Adkisson v Koch | John Scaggs | CJ-1999-192 Semnole Co | 2009 | \$30,000,000 | N/A | \$30,000,000 | 25.07% | 5.15 | 0.35% | Undetermined | 0.21% | 25.63% |
| 47 | In re Lease Oil Antitrust Lit | Judge Jack | 186 FRD 403 USSD TX | 1999 | \$11,250,000 | N/A | \$11,250,000 | 25.00% | Unreported | 3.30% | Undetermined | 0.12% | 28.42% |
| 48 | Stamp Bro v Continental | Joe Heaton | CIV-14-182-HE | 2017 | \$6,650,000 | Undetermined | \$6,650,000 | 21.35% | Unreported | 1.21% | 0.00% | 0.75% | 23.31% |
| 50 | Barnaby v. Ocean Energy | N Finson Barefoot | CJ-1996-73 Dewey Co | 2001 | \$2,875,000 | N/A | \$2,875,000 | 20.87% | Unreported | 2.61% | Undetermined | 0.00% | 23.48% |
| 52 | Dunstan v. Sonat | Robert Collier | CJ-1996-12 Dewey Co | 1998 | \$1,572,500 | \$325,000 | \$1,897,500 | 20.67% | Unreported | Unreported | Undetermined | 0.00% | 20.67% |
| Total of All Reported O&G Class Actions | | | | 1996-2018 | \$1,889,371,110 | \$365,769,254 | \$2,255,140,364 | | | | | | |

| Royalty Owner vs. Working Interest Owner Class Actions | # of Cases | "Common Fund" (Cash Portion only) | Other Benefits to the Class | Total Recovery for the Class |
|--|------------|-----------------------------------|-----------------------------|------------------------------|
| Royalty Owner Class Actions | 55.15 | \$1,702,221,110 | \$365,769,254 | \$2,067,990,364 |
| Working Interest Owner Class Actions | 3.85 | \$187,150,000 | \$0 | \$187,150,000 |
| Total of All Reported O&G Class Actions | 59 | \$1,889,371,110 | \$365,769,254 | \$2,255,140,364 |

The Court's analysis of COSMO's Class Action Tracking Report reveals the following statistics:

- 56 completed Class Action Settlements are reported, with Common Funds totaling over \$1.6 Billion (\$1,640,571,110), plus another 3 pending settlements, one of which (Cecil v. BP) has now been completed, bringing the total Common Funds to almost \$1.9 Billion (\$1,889,371,110);
- **The range of fee awards for these reported Oklahoma oil and gas class actions is between 20.67% and 45% of the Common Fund, with the weighted average fee being 38.15%** (this report, together with the Supporting Fee Orders, reflect the collective judgment of 33 Federal and State District Judges as to the range and average of reasonable attorneys' fee awards in Oklahoma oil and gas class actions over the past two decades);
- 30 reported awards of attorneys' fees, by 19 different Federal and State District Judges, reflect a reasonable attorneys' fee award of greater than or equal to 40% of the Common Fund (40.53% wgt avg); and
- 67.55% of Common Fund Dollars were assessed Attorneys' Fees greater than or equal to 40% of the Common Fund (\$1,317,775,653 / \$1,640,571,110).

See B&S Declaration, p. 45-46, ¶97 and Exhibit “A” attached thereto; Plaintiff’s Tr. Exhibits 5 & 6, Supporting Fee Orders, Exhibits 1 through 56.

48. Consistent with COSMO’s Class Action Tracking Report, the Honorable Steven W. Taylor, former Oklahoma Supreme Court Justice, recently testified in a similar royalty owner class action that “*In Oklahoma state court (of which I am very familiar) a 40% contingency fee in these type cases is very routine.*” [Emphasis added.]³⁰

Nationwide Surveys of Class Actions:

49. Several empirical studies have been conducted on class action fee awards nationwide involving awards from 1993 through 2011. See 5 Newberg on Class Actions § 15:67, 15:83 (5th ed.) (“1993-2011 National Surveys”).

50. Citing 1 Alba Conte, *Attorney Fee Awards* (3rd ed. 2004) and 4 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions* (4th ed. 2002), which were relying upon these 1993-2011 National Surveys, the Oklahoma Supreme Court held “[f]or example, the attorney’s fees awarded in complex class actions are normally 20% to 30% of the recovered fund, with deviations from that range when the fund is extraordinarily large or small relative to the hours of work expended by the attorneys. . . . We determine that an award of 40% of the common fund in this case is excessive in comparison to the average percentage – 20% to 30% - used in reported cases involving class action litigation.” [Emphasis added.] Opinion, ¶22.

51. Subsequent to the 1993-2011 National Surveys, numerous reported cases have found fee awards in class actions to average around **one-third (33.3%) of the recovery**, citing *Newberg on Class Actions* (5th ed.), suggesting that a current range of reasonable percentages to

³⁰ Appellants’ Reply Brief (4/15/2019), p. 20-21, Supplemental Appendix 3, *Declaration of Steven W. Taylor, Cecil v. BP America*, Case No. 16-CV-410, U.S.E.D.OK, 10/19/2018), p. 5, ¶12.

have an upper end greater than 30% cited in the Opinion.³¹

52. The Court’s review and analysis of these surveys and other presented evidence regarding the customary fee for class actions nationwide, and specifically for these types of oil and gas class actions in Oklahoma, supports awarding the Requested Attorneys’ Fee.

Factor 6: Whether the Fee is Fixed or Contingent

53. Before this Litigation began, Class Representatives entered into contracts with Class Counsel to represent themselves and a class of similarity situated Continental royalty owners on a State-wide basis. The contracts agreed to by Class Counsel and Class Representatives provide for a fee contingent upon Class Counsel’s successful prosecution of the case:

If we are successful, we will receive as a fee forty percent (40%) of all consideration which is received by you as a result of our efforts in prosecuting this claim, *i.e.*, forty percent (40%) of the gross recovery. As for the remainder of the class members, we will apply

³¹ “[I]f there is a rough template for what percentage seems accurate, it arises out of the contingent fees that clients pay lawyers in basic tort cases, as that is arguably the most robust market for contingent fees. The age-old assumption is that tort lawyers receive a third of their clients’ recovery. That 33% figure provides some anchoring for the discussion of class action awards. Indeed, many courts have stated that, regardless of whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.” [Emphasis added.] 5 *Newberg on Class Actions* § 15:73 (5th ed.), citing, *Brewer v. Molina Healthcare, Inc.*, 2018 WL 2966956, at *4 (N.D. Ill. 2018) (citing *Newberg on Class Actions*) (“[F]ee awards in class actions average around one-third of the recovery[.]”); *Furman v. At Home Stores LLC*, 2017 WL 1730995, *4 (N.D. Ill. 2017) (quoting *Newberg on Class Actions*) (“[F]ee awards in class actions average around one-third of the recovery.”); *Thomas v. FTS USA, LLC*, 2017 WL 1148283, *5 (E.D. Va. 2017), report and recommendation adopted, 2017 WL 1147460 (E.D. Va. 2017) (citing *Newberg on Class Actions*) (“Of course, any discussion of percentage awards should acknowledge the age-old assumption that a lawyer receives a third of his client’s recovery under most contingency agreements.”); *Johnson v. Midwest Logistics Systems, Ltd.*, 2013 WL 2295880, *6 (S.D. Ohio 2013) (“[E]mpirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.” (quoting *Newberg on Class Actions*)); *Dallas v. Alcatel-Lucent USA, Inc.*, 2013 WL 2197624, *12 (E.D. Mich. 2013) (noting that “fee awards in class actions average around one-third of the recovery” (quoting *Newberg on Class Actions*)); *Freebird, Inc. v. Merit Energy Co.*, 2013 WL 1151264, *5 (D. Kan. 2013) (“[E]mpirical studies show that fee awards in class actions average around one-third of recovery[.]” (citing *Newberg on Class Actions*)) [The Court notes that *Freebird* was a royalty owner class action similar to the instant action.]; *Hershey v. ExxonMobil Oil Corp.*, 2012 WL 5306260, *8 (D. Kan. 2012), *aff’d* in part, dismissed in part, 550 Fed. Appx. 566 (10th Cir. 2013) (“And, more generally, a leading authority recognizes that “[e]mpirical studies show that ... fee awards in class actions average around one-third of the recovery.” (quoting *Newberg on Class Actions*)); *In re Packaged Ice Antitrust Litigation*, 2011-2 Trade Cas. (CCH) ¶ 77727, 2011 WL 6209188, *19 (E.D. Mich. 2011) (“Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.” (quoting *Newberg on Class Actions*)); *Childs v. Unified Life Ins. Co., Medicare & Medicaid P 303918*, 2011 WL 6016486, *15 (N.D. Okla. 2011) (same) (quoting *Newberg on Class Actions*); *In re Checking Account Overdraft Litigation*, 830 F. Supp. 2d 1330, 1366 n.36 (S.D. Fla. 2011) (same) (quoting *Newberg on Class Actions*).

to the Court for the same forty percent (40%) of gross recovery fee. In the event such consideration includes non-cash consideration, such as the agreement to do or not do some future act, the present cash value of such non-cash consideration shall be determined and utilized in computing the full attorney's fee payable pursuant to this agreement.

B&S Declaration, ¶103; *see also*, Fee Agreements attached to Class Counsel's Motion for Attorneys' Fees and Expenses, Exhibit "A."

54. *"Oklahomans have the right to negotiate a contract with their chosen counsel and to engage counsel on a contingent percentage fee basis. 5 O.S.2011, § 7. For many Oklahomans and in many areas of the law, contingent fee agreements may be the only means possible to secure legal services. See, e.g., Sneed v. Sneed, 1984 OK 22, ¶ 3, 681 P.2d 754, 756."* Opinion, ¶15.³²

55. *"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); Opinion, ¶16.

56. The Court's review and analysis as to whether the fee is fixed or contingent supports awarding the Requested Attorneys' Fee.

Factor 7: Time Limitations Imposed by the Client or the Circumstances

57. At various times and for extended periods, the scheduling and deadlines in this protracted litigation required 100% of the resources of B&S, a two-attorney law firm. Continental is a large, well-funded Defendant represented by numerous, very competent counsel with large supporting staffs. To fulfill their obligations to the Class, B&S had to refuse other work for existing and potential new clients. B&S Declaration, ¶107.

58. Various time limitations are also demonstrated by reviewing the Blaine County

³² "[C]ontingent fees are still the poor man's key to the courthouse door." *Id.*

Court Clerk's docket index in this case.

59. The Court's review and analysis of the time limitations imposed by the circumstances of this case supports awarding the Requested Attorneys' Fee.

Factor 8: The Amount in Controversy and the Results Obtained

60. This Court has already found that Class Counsel procured a Settlement that was fair and adequate to the Class (*"The settlement between the Class Representatives, the Settlement Class and Continental embodied in the Settlement Agreement is fair, reasonable and adequate to the Settlement Class within the meaning of 12 O.S. § 2023."*) Judgment and Order Approving Class Action Settlement (6/12/2018), ¶4.

61. 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 1.³³

62. After making necessary adjustments for the quality of the Class Members' oil and gas leases and excluding claims against other working interest owners in CLR operated wells, the Class Adjusted Damage Model for Time Period 1 reflected potential Class Damages of:

\$ 39.6 Million Unpaid Royalties
\$ 65.4 Million 12% Statutory Interest
\$105.0 Million Class Adjusted Damages for Time Period 1.³⁴

63. 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

³³ B&S Declaration, ¶108.

³⁴ B&S Declaration, ¶109.

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, and this Court approved, a settlement for the Time Period 1 Claims (which settlement released only CLR and did not release any other working interest owners in CLR operated wells) 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.³⁵

64. The Total Gross Sub-Class 1 Payment represents a 47.5% 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 3% compounded annual interest thereon.³⁶

65. In view of the litigation risk³⁷ involved in this Litigation, Class Counsel considered this to be a very good recovery for Sub-Class 1,³⁸ and so does this Court.

66. Considering the value of the Settlement as to Sub-Class 2 (\$11,450,612) and the benefits for the Future Production Period (estimated to exceed \$50 million in value), which together substantially exceeds the value of the Sub-Class 1 recovery, Class Counsel,³⁹ the expert

³⁵ B&S Declaration, ¶110.

³⁶ B&S Declaration, ¶111.

³⁷ See Factor 13: The Risk of Recovery in the Litigation, ¶ 88-93 *infra*. further addressing litigation risk in this Litigation.

³⁸ B&S Declaration, ¶112.

³⁹ B&S Declaration, ¶112.

witnesses⁴⁰ and this Court consider this to be an excellent Settlement for the Class.

67. The Court's review and analysis of the amount in controversy and the results obtained supports awarding the Requested Attorneys' Fee.

Factor 9: The Experience, Reputation and Ability of the Attorneys

68. Properly prosecuting this Litigation required counsel of significant and particularized skills. Class Counsel are comprised of highly skilled and dedicated attorneys with experience prosecuting large class actions such as this. Class Counsel has unique experience with oil and gas royalty underpayment class actions. This Litigation has required investigation and mastery of complex factual circumstances, the ability to develop creative legal theories, and the skill to respond to a host of legal defenses. To properly perform the legal services this Litigation required, Class Counsel called on their extensive knowledge of gas marketing, engineering, accounting, damages modeling and royalty payment practices.⁴¹

69. Class Counsel regularly represent plaintiffs in complex oil and gas litigation, and have served as Class Counsel in several class action cases involving oil and gas issues. B&S practices primarily in the area of complex oil and gas litigation, with over 40 years of experience

⁴⁰ Gum, Tr. p. 181 – 182 (“Q: One of the other factors that the court is required to consider is factor eight, is the amount in controversy and the results obtained a factor that warrants or that -- well that at least is a factor to be considered in determining what's a reasonable fee. Is that something that you looked at as well? A: I did. Q: And what were your conclusions? A: Well I thought the cash that was eventually negotiated was quite reasonable, seasonable in my experience to other cases like this that I have mediated. Now obviously all of these cases are not the same. They vary. The dollars are different. But in terms of percentages of recovery I thought this was rated well on that first time period in particular where you're looking at a recovery that would compare to your refined model. You are recovering all your actuals. Plus you're recovering some interest. I have negotiated and settled as a mediator a lot of these cases where there was no interest recovered. And in fact only a fraction of the actual damages recovered as a part of the settlement. This stands out in my experience as one of the better settlements on the cash. And that doesn't even take into account what I consider to be the benefits of the prospective third period provisions of this settlement which really, in my judgment, provide to the members of the class going forward a very efficient and effective way of bird dogging Continental's performance and making sure that they, that Continental is sticking with the deal and not in making sure they're doing it, but enforcing the deal. That mechanism I think is, it's kind of a prophylactic thing. I think that's worth a lot in the context of this settlement. I can't ignore that in terms of the value.”)

⁴¹ B&S Declaration, ¶113.

for Burns (as both an attorney and petroleum engineer), and over 35 years of experience for Stowers (as both an attorney and a Certified Public Accountant). B&S (and its team of attorneys and experts) successfully tried and defended on appeal the *Bridenstine v. Kaiser-Francis* royalty owner class action that ultimately resulted in recovery of \$109,974,437 in damages. (See Supporting Fee Cases, Exhibit 4.) *Bridenstine* is the **only** case of this nature that has been tried to a jury (through verdict) and affirmed on appeal in Oklahoma. B&S has served as Class Counsel in the following oil and gas class actions that are now resolved:

| <u>Case Reference</u> | <u>Common Fund</u> | <u>Supporting Fee Cases, Ex #</u> |
|--------------------------------------|--------------------|-----------------------------------|
| <i>Bridenstine v. Kaiser-Francis</i> | \$109,974,437 | 4 |
| <i>Lobo v. BP</i> | \$150,000,000 | 22 |
| <i>Robertson v. Sanguine</i> | \$ 13,250,000 | 5 |
| <i>Taylor v. Texaco</i> | \$ 12,000,000 | 40 |
| <i>Velma-Alma v. Chesapeake</i> | \$ 10,500,000 | 12 |
| <i>Chockley v. BP</i> ⁴² | \$147,000,000 | |

B&S is presently counsel in one (1) other pending class action, *Fisher v. Exxon*, CJ-2002-125, District Court of Texas County. Furthermore, Stowers was appointed by the District of Caddo County to serve as the Special Master overseeing the distribution process in *Simmons v. Anadarko* (\$155,000,000 settlement), Supporting Fee Cases, Exhibit 1.⁴³

70. Class Counsel, Terry L. Stowers is the Executive Director the Coalition of Oklahoma Surface and Mineral Owners (COSMO) and a Director on the Board of OK-NARO (the Oklahoma Affiliate of the National Association of Royalty Owners), and is well respected as the voice for Oklahoma royalty owners at the Oklahoma Capitol, Oklahoma Corporation Commission and the Oklahoma Judiciary.

⁴² *Chockley v. BP*, No. CJ-2002-84, District Court of Beaver County, settled as part of *Cecil v. BP*, No. 16-CV-00410-RAW, United States District Court for the Eastern District of Oklahoma for \$147,000,000 plus and estimated \$65,000,000 in past and future benefits.

⁴³ B&S Declaration, ¶114.

71. B&S' experience in the above stated cases, and their extensive background and knowledge of Oklahoma oil and gas law, was of great benefit in successfully pursuing the Class Claims in this Litigation.⁴⁴

72. Class Counsel Kerry Caywood's practice has involved oil and gas litigation for over fifty (50) years. Mr. Caywood has served as local Class Counsel in numerous royalty owner class actions.⁴⁵

73. The skill and experience Class Counsel obtained in litigating large commercial class actions, and royalty underpayment class actions in particular, was required in this Litigation, especially considering the quality of lawyers that make up Continental's defense team, who are skilled class action defense attorneys with substantial oil and gas knowledge and experience.⁴⁶

74. "*Class counsel in this case performed highly specialized legal services.*" Opinion, ¶22, fn. 10.

75. The Court's review and analysis of the experience, reputation and ability of the attorneys representing the Class supports awarding the Requested Attorneys' Fee.

Factor 10: Whether or Not the Case is an Undesirable Case

76. The risk and changing status of the law made this case undesirable in an economic sense when Class Counsel agreed to accept the engagement.⁴⁷

77. Robert Gum's testimony and declaration explaining the risks of litigation and listing

⁴⁴ B&S Declaration, ¶115.

⁴⁵ B&S Declaration, ¶116.

⁴⁶ B&S Declaration, ¶116.

⁴⁷ B&S Declaration, ¶118; Gum, Tr. 189 ("Q: Do you regard these cases as being undesirable? A: I do. Let me qualify that. Just from an economic perspective as a lawyer, yes. I don't really look at ever doing any more of them. Do I think there is a social benefit to it? I do. So it's not undesirable from that perspective but from the lawyers pecuniary perspective and professional practice perspective, yeah, I don't think these are desirable.")

the number of these cases with no recovery was sobering.⁴⁸

78. The case was litigated against the backdrop of a class action standard that is in flux (as reflected by fact that the Oklahoma Court of Civil Appeals reversed this Court's class certification of an "issue" class), and a substantive rule (the "marketable product" rule) that has been the object of repeated challenge in both the judicial and legislative arenas. It is quite undesirable for lawyers to take a case in which the basic rules may change during the life of the litigation, especially when the litigation is likely to take many years, thus providing an extended period of exposure to changing laws.⁴⁹

79. Class cases are also less desirable than ordinary hourly cases because the attorneys not only have to take much greater risk, but to live with that risk for a period of many years. This litigation already has taken over ten (10) years from the initial investigation, and if not settled would likely take many more years to reach a final conclusion. . The risk in terms of time invested and out-of-pocket expense make cases such as this very undesirable.⁵⁰

80. When Class Counsel accepted this case, they agreed to take on a legal Goliath. Had

⁴⁸ Minute Order, p. 1; The Court, Tr. p. 61, l. 12-15 ("It seems that a big part of the attorney fee consideration is the risk. The risk of success versus failure and Mr. Gum's testimony is relevant on that point."); Gum, Tr. p. 186 ("In my personal view these cases are highly undesirable as a plaintiff's attorney. I've done some. I hope never to have to do any more. I don't consider them desirable. I know there can be a good payday at the end of the day if it works out but the cost of getting to that payday is extreme and I can -- when I first got involved in doing these cases as a plaintiff I was in another old law firm that embarked into some of these cases. The cost of carrying these cases for years and years and paying the expert bill as you go, advancing it, and having all your lawyers billing into a file that doesn't generate any cash. It brought my old law firm to an end. It got to the point in that firm that the junior partners couldn't make their cash draws. And that's the kind of extreme pressure that these kind of cases put on lawyers and I don't think this case is any different. Now you guys are more experienced and you're more set and you're more able to withstand these things, here 2010 forward, but I saw plenty of signs in this file of what I would call scorched earned defense.")

⁴⁹ B&S Declaration, ¶118; Stowers, Tr. p. 98, l. 9-25 ("It is quite undesirable for lawyers to take a case in which the basic rules may change during the life span of litigation, especially when the litigation is likely to take many years, thus providing an extended period of exposure to changing laws. Class cases are also less desirable than ordinary hourly cases because the attorneys not only have to take a much greater risk, but they have to live with that risk for a period of many years. . . . And the risk in terms of invested and out-of-pocket expenses make cases such as this very undesirable for most attorneys.")

⁵⁰ B&S Declaration, ¶119.

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.⁵¹

81. The Court's review and analysis of whether or not the case is an undesirable case supports awarding the Requested Attorneys' Fee.

Factor 11: The Nature and Length of the Professional Relationship with the Client

82. At the time this Litigation commenced, Bill Strack was the Trustee of two of the Plaintiff Trusts. Bill Strack was the long-time President of the Blaine County Mineral Owners Association. As the Executive Direct of COSMO, Stowers had a relationship with the Blaine County Mineral Owners Association. Prior to this Litigation: (1) Class Counsel Kerry Caywood had existing Attorney-Client Relationships with the Plaintiffs; and (2) B&S did not have existing Attorney-Client Relationships with the Plaintiffs.⁵²

83. The Court does not find that anything about the nature and length of the professional relationship with the clients negatively impacts the Court's ability to award the Requested Attorneys' Fee.

Factor 12: Awards in Similar Cases

84. The Court thoroughly reviewed and analyzed the awards in similar cases as part of

⁵¹ Minute Order, p. 3; Gum, Tr. p. 188 ("Well it's inherent in most contingency fee litigation that there is a risk that the lawyer will never be compensated for his time. That's part of it. In my calculus that's what justifies a nice percentage when you are successful is to compensate the attorney for that risk. In these cases that risk is very real. And it has gotten more real as time has gone along. I tip my hat to the defense bar in these cases. They have learned and the defense bar has become extremely effective at creating defenses, urging those defenses in a way that really bogs these cases down, and so I think over time you run the risk of the plaintiff team, that being the attorneys, the class, everybody, just getting wore out and eventually at the end of the day if you go back and you look at the time you spent on the case it's an economic disaster.")

⁵² B&S Declaration, ¶120.

the analysis of “Factor 5: The Customary Fee,” which is incorporated herein as if fully restated.

85. The range of fee awards in similar Oklahoma oil and gas class actions, as reflected in the COSMO Report, is between 20.67% and 45% of the Common Fund, with the weighted average fee being 38.15% (the COSMO Report, together with the Supporting Fee Orders, reflect the collective judgment of 33 Federal and State District Judges as to the range and average of reasonable attorneys’ fee awards in Oklahoma oil and gas class actions over the past two decades), trending in more recent cases towards 40%.

86. The range for the national average award of fees appears to be between 20% to 30%, trending in more recent cases upwards to 33%.

87. The Court’s review and analysis of awards in similar cases supports awarding the Requested Attorneys’ Fee.

Factor 13: The Risk of Recovery in the Litigation

88. The Court addressed the risk of recovery in the litigation as part of the analysis of “Factor 10: Whether or Not the Case is an Undesirable Case,” which is incorporated herein as if fully restated.

89. The Court notes that Class Counsel utilized a litigation risk analysis, as discussed above, which resulted in a settlement of the litigation of approximately 50% of the Adjusted Damage Model, which this Court has already approved as reasonable.⁵³

90. The case was litigated against the backdrop of a class action standard that is in flux,

⁵³ Stowers, Tr. p. 31-36 (The risk of this type of litigation is considerable and substantial; numerous cases have resulted in no recovery, *i.e.*, no attorney’s fee; the risk of class certification has increased since the firsts cases were filed in 2001; the law on “marketability” continues to be challenged.); Stowers, Tr. p. 100 (“The litigation risk analysis resulted in a settlement of approximately 50 percent of the adjusted damage model. The actual litigation risk we believe is substantially more than 50 percent. . . . the risk of no recovery in this case was very real.”)

and a substantive rule (the “marketable product” rule) that has been the object of repeated challenge in both the judicial and legislative arenas. For example, the industry requested the Oklahoma Supreme Court accept *certiorari* to review the “marketable product” rule, asserting that the Oklahoma Supreme Court should reverse or modify the existing rule such that royalty owners would be required to share in all costs incurred after the gas leaves the tank battery. If five (5) Supreme Court Justices would have agreed with their argument, the recovery in this case would have been severely reduced. *See Pummill v. Hancock*, Appeal No. 114,703, 2018 OK CIV APP 48 (cert denied 5/21/2018). Further, the Court of Civil Appeals recently affirmed a jury verdict against the royalty owners resulting in a judgment for the oil company in a case regarding many of the same issues as were present in this case. *See Slatten v Range Resources*, Appeal No. 118,171, COCA Opinion, 3/3/2021, *Petition for Certiorari Review pending*. The risk of no recovery in this case was very real.⁵⁴

91. Bill Hetherington and Robert Gum testified that in their opinions, the risk in this litigation was substantial and likely 50% or greater⁵⁵

⁵⁴ B&S Declaration, ¶123.

⁵⁵ Gum, Tr. p. 42-46 (“I believe there are risks that put the ultimate outcome in doubt here, and from my ease of just thinking about it I tend to break those down into two categories. One is substantive law risk and the other is procedural risk. . . . [Referring to substantive law risk,] Quite frankly it's one of the reasons why I have been very successful in settling these cases [as the mediator] is by pointing out to the parties you're going to go through the file not knowing what the standard is, how are you going to know whether you are going to win or lose. . . . That leaves the ultimate outcome in doubt if this case, were it not be settled. In my judgment it's not the greatest risk. The greatest uncertainty is associated with a procedural aspect of the case. . . . When the marketable condition standard was first published by the court it didn't seem like the court had much interest in picking apart the terms of specific leases to see how they might affect the application of this standard. That seems to be changing now in terms of the character of the lease and so now you've got the ambiguous standard, you've got questions about how these lease terms apply, and then you move to the procedural side of this, and here I'm referring to certification. . . . Trial judges are a little more prone to certify, but there is a huge risk of decertification in these cases as the way things sit right now today. And so I would say when you couple the substantive risk with the procedural risk with decertification in one of these cases sitting here today **I would put that risk in excess of 50 percent in terms of a plaintiffs' success in one of these cases. . . . People don't pay a lot of attention to the class actions that are unsuccessful, where the class recovers not a dime. And there are a number of those.**” [Emphasis added.]); Hetherington, Tr. p. 247, l. 5 – 13 (“I've never seen more risk in any case ever then these royalty underpayment cases. These marketable product rule cases. They are a beast. *continued* . . .

92. Based upon the risk analysis utilized in approving the settlement of the litigation and the testimony of Class Counsel and Class Counsel's expert witnesses, the Court finds that the risk of no recovery by the Class in this litigation was 50% or greater.⁵⁶

93. The Court's review and analysis of the risk of recovery in the litigation supports awarding the Requested Attorneys' Fee.

Determination of a Reasonable Attorneys' Fee:

94. *"The goal in every attorney fee case is not to select a methodology but to arrive at a reasonable fee."* Opinion, ¶ 18. The Court having found that the thirteen (13) statutory factors, both singularly and collectively, support an award of the Requested Attorneys' Fee, having reviewed the Opinion, and being constrained by the Settlement Term Sheet and Order Approving the Settlement Term Sheet, including Class Counsel's agreement to reduce their request attorneys' fee by \$7,349,923.16 (from \$24,500,094.56 to \$17,150,171.40), finds that the Requested Attorneys' Fee of **\$17,150,171.40 represents a reasonable attorneys' fee** to be awarded to Class Counsel.

95. While *"Oklahoma's class action statutory scheme gives courts a liberal framework in calculating and awarding fees"* (Opinion, ¶ 12) and only requires the examination of the thirteen (13) factors in determining a reasonable attorneys' fee, the Opinion also held *"both the lodestar method and the percentage method are valuable to determine attorney's fees under Oklahoma's class action statute. A court's goal in deciding attorney fee awards is to award a reasonable fee,*

And they have high risk in them. The risk has gotten greater and greater as time goes on and the fact that counsel participates in this risk at that level not only tells you a lot about the attorneys and their expertise but the willingness to help their clients because if they don't everybody loses.")

⁵⁶ Mr. McClure concurred with the experts and the Court that the risk of litigation was at least 50%, *see* McClure, Tr. p. 227, l. 2 – 8 ("Q: [by the Court] Q: And what I have heard from the expert witness is that there is a less than 50 percent chance of recovery at the outset of the case. Do you dispute that?

A: Well I don't really -- it seems likely to me you're right, there's probably a 50 percent chance of recovery.")

and a court should compare the results of both methods to ensure it is awarding a reasonable fee in a common fund class action." Opinion, ¶ 19. Accordingly, the Court has further considered the thirteen (13) factors in the context of both the percentage of fund and lodestar methodologies.

Percentage of Fund Method:

96. The Court having found that the thirteen (13) statutory factors, both singularly and collectively, support an award of the Requested Attorneys' Fee, having reviewed the Opinion, and being constrained by the Settlement Term Sheet and Order Approving the Settlement Term Sheet, including Class Counsel's agreement to reduce their request attorneys' fee by 30% (from 40% to 28%), finds that the Requested Attorneys' Fee of 28% of the Sub-Class 1 and Sub-Class 2 Common Fund is well within the reasonable range of similar awards in similar cases, as set forth in Factor 5: The Customary Fee, and Factor 12: Awards in Similar Cases. Accordingly, the Court finds **28% of the Sub-Class 1 and Sub-Class 2 Common Fund** (which is only 15.4% of the total benefits recovered for the Class), or **\$17,150,171.40**, represents a reasonable attorneys' fee to be awarded to Class Counsel.

Lodestar Method:

97. The Lodestar Method requires consideration of three components: (1) reasonable hours expended; (2) hourly rates; and (3) consideration of a lodestar multiplier.

98. The Court previously addressed the first component, "reasonable hours expended," as "Factor 1: Time and Labor Required," which is incorporated herein as if restated. The Court finds the time expended, and to be expended, by Class Counsel, as reflected in the B&S Supplemental Declaration and restated in the Court's analysis of Factor 1 herein (11,677.75 hours) was and is reasonable and necessary to advance and protect the interests of the Class.

99. Addressing the second component, "hourly rate," the Court finds the following

rates to be fair, reasonable, and “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:⁵⁷

| Strack v Continental | | | | |
|--|------------------------------|-----------------|--------------------|--|
| Summary of Class Counsel's Hourly Rates | | | | |
| Firm | Attorney or Paralegal | Title | Hourly Rate | Range of Rates within the "Legal Community" |
| Burns & Stowers | Douglas E. Burns | Senior Attorney | \$875 | \$550-\$900 |
| Burns & Stowers | Terry L. Stowers | Senior Attorney | \$875 | \$550-\$900 |
| Park, Nelson, Caywood, Jones | Kerry Caywood | Attorney | \$500 | \$350-\$700 |
| Park, Nelson, Caywood, Jones | Angela Caywood Jones | Attorney | \$500 | \$350-\$700 |
| Burns & Stowers | Pamela Moulton | Paralegal | \$275 | \$90-\$350 |
| Burns & Stowers | Tammie Wheeler | Paralegal | \$200 | \$90-\$350 |

In support of this finding, the Court further finds:

- a. The Honorable Kimberly West recently examined this specific issue and determined that the appropriate “legal community” to be considered in these types of cases was that of a “national complex litigation firm.” See *Chieftain v XTO*, 11-CV-29-KW, ¶6(jj), Supporting Fee Orders, Exhibit 26 and *Reirdon v XTO*, 16-CV-87-KW, ¶6(jj), Supporting Fee Orders, Exhibit 27. In arriving at this conclusion, Judge West relied in part upon the Declaration of Geoffrey P. Miller, a copy of which is included in Supporting Fee Orders, Exhibit 26(D). See *Chieftain* (Supporting Fee Orders, Exhibit 26) at ¶6(jj), citing Miller Decl. (Supporting Fee Orders, Exhibit 26(D)) at ¶83.⁵⁸
- b. In *Chieftain*, Professor Miller provided substantial empirical data regarding hourly rates of national complex litigation law firms. Specifically, the following table presents a summary of hourly rates approved from 2008 through 2012 in class action settlements in the U.S. District Court for the Southern District of New York—the court in which Professor Miller’s previous empirical studies on class

⁵⁷ The Oklahoma Supreme Court previously affirmed these rates stating, “Class counsel requested an hourly rate of \$875 for counsel Douglas Burns and Terry L. Stowers and an hourly rate of \$500 for counsel Kerry Caywood and Angela Caywood Jones. . . . The party requesting attorney fees must offer evidence of the standard rate in the legal community at the time the attorney performed the services. *Burk*, 1979 OK 115, ¶ 12, 598 P.2d at 662. The relevant legal community is the local community. *Id.* ¶ 20, 598 P.2d at 663. Class counsel in this case performed highly specialized legal services. Class Representatives offered evidence that attorneys from national litigation firms that performed services in oil and gas class actions in Oklahoma charged hourly rates ranging from \$550 to \$900 per hour. The district court did not abuse its discretion when it considered rates of attorneys performing similar work in Oklahoma from national litigation firms. The rate of \$875 per hour has a rational basis in the evidence presented.” Opinion, ¶23, fn. 10.

⁵⁸ B&S Declaration, ¶98.

action settlements and attorneys' fees found the most class actions consistently were filed. Miller Decl. (Supporting Fee Orders, Exhibit 26(D)) at ¶88. Although these data points are not all-inclusive, based on Professor Miller's experience and scholarly research, he believed they reflect a reasonable cross-section of market rates for qualified plaintiffs' counsel in complex class actions nationwide over the past decade:

| National Class Action Plaintiff Firms' Billing Rates | | | |
|---|---|---|---------------------|
| Case Name/Number | Plaintiff Firm | Citation | Partners' Fee Range |
| <i>In re MGM Mirage Sec. Litig.</i> , No. 2:09-cv-01558-GMN-VCF | NPR, Kessler Topaz Meltzer & Check LLP and Robbins Geller Rudman & Dowd LLP | (D. Nev.) (Nov. 2015) (Dkt. Nos. 366-1, 367-1, 368-1) | \$625 - \$925 |
| <i>In re Bear Stearns Companies, Inc. Securities, Derivative and ERISA Litig.</i> , No. 08-cv-2793 (RWS) | Berman DeValerio | (S.D.N.Y.) (Aug. 2012) (Dkt. No. 302-4) | \$595 - \$780 |
| <i>In re Bear Stearns Companies, Inc. Securities, Derivative and ERISA Litig.</i> , No. 08-cv-2793 (RWS) | Labaton Sucharow LLP | (S.D.N.Y.) (Aug. 2012) (Dkt. No. 302-5) | \$725 - \$975 |
| <i>Board of Trustees of the AFTRA Retirement Fund et al. v. JPMorgan Chase Bank, N.A.</i> , No. 1:09-cv-00686 (SAS) (DCF) | NPR and Kessler Topaz Meltzer & Check LLP | (S.D.N.Y.) (May 2012) (Dkt. No. 187-1) | \$625 - \$735 |
| <i>In re Wachovia Equity Securities Litigation</i> , No. 08 Civ. 6171 (RJS) | Kirby McInerney LLP | (S.D.N.Y.) (Apr. 2012) (Dkt. No. 106-5) | \$600 - \$800 |
| <i>In re Lehman Brothers Securities and ERISA Litig.</i> , No. 1:08-cv-05523 (LAK) (GWG) | Bernstein, Litowitz & Grossman LLP | (S.D.N.Y.) (Mar. 2012) (Dkt. No. 343-12) | \$650 - \$975 |
| <i>In re Lehman Brothers Securities and ERISA Litig.</i> , No. 1:08-cv-05523 (LAK) (GWG) | Kessler Topaz Meltzer & Check LLP | (S.D.N.Y. Mar. 2012) (Dkt. No. 343-13) | \$600 - \$725 |
| <i>In re Lehman Brothers Securities and ERISA Litigation</i> , No. 1:08-cv-05523 (LAK) (GWG) | Labaton Sucharow LLP | (S.D.N.Y.) (Mar. 2012) (Dkt. No. 343-17) | \$750 - \$975 |
| <i>Rubin v. MF Global, Ltd., et al.</i> , No. 08 Civ. 2233 (VM) | Barrack Rodos & Bacine | (S.D.N.Y.) (Nov. 2011) (Dkt. No. 198) | \$560 - \$740 |
| <i>Rubin v. MF Global, Ltd., et al.</i> , No. 08 Civ. 2233 (VM) | Cohen Milstein Sellers & Toll PLLC | (S.D.N.Y.) (Nov. 2011) (Dkt. No. 198) | \$700 - \$795 |

| | | | |
|---|--|--|---------------|
| <i>In re Wachovia Preferred Sec. and Bond/Notes Litig.</i> , No. 09 Civ. 6351 (RJS) | Bernstein Litowitz Berger & Grossman LLP | (S.D.N.Y.) (Oct. 2011) (Dkt. No. 148-7) | \$650 - \$975 |
| <i>In re Wachovia Preferred Sec. and Bond/Notes Litig.</i> , No. 09 Civ. 6351 (RJS) | Kessler Topaz Meltzer & Check, LLP | (S.D.N.Y.) (Oct. 2011) (Dkt. No. 148-8) | \$600 - \$725 |
| <i>In re Wachovia Preferred Sec. and Bond/Notes Litig.</i> , No. 09 Civ. 6351 (RJS) | Robbins Geller Rudman & Dowd LLP | (S.D.N.Y.) (Oct. 2011) (Dkt. No. 148-9) | \$565 - \$775 |
| <i>Cornwell et al. v. Credit Suisse Group et al.</i> , No. 08 Civ. 03758 (VM) | Robbins Geller Rudman & Dowd LLP | (S.D.N.Y.) (July 2011) (Dkt. No. 117) | \$565 - \$795 |
| <i>Lapin v. Goldman Sachs & Co.</i> , No. 04 Civ. 2236 (RJS) | Kirby McInerney LLP | (S.D.N.Y.) (Nov. 2010) (Dkt. No. 129) | \$600 - \$900 |
| <i>Lapin v. Goldman Sachs & Co.</i> , No. 04 Civ. 2236 (RJS) | Glancy Binkow & Goldberg LLP | (S.D.N.Y.) (Nov. 2010) (Dkt. No. 129) | \$625 - \$725 |
| <i>In re MBLA, Inc., Sec. Litig.</i> , No. 08 Civ. 0264 (KMK) | Bernstein Litowitz Berger & Grossman LLP | (S.D.N.Y.) (Dec. 2011) (Dkt. No. 92) | \$700 - \$975 |
| <i>In re Refco, Inc. Secs. Litig.</i> , No. 05 Civ. 08626 (JSR) | Grant & Eisenhofer P.A. | (S.D.N.Y.) (Sept. 2010) (Dkt. No. 738-5) | \$650 - \$845 |
| <i>In re Merrill Lynch & Co. Inc., Securities, Derivatives and ERISA Litig.</i> , No. 07-cv-09633 (LBS) (AJP) (DFE) | Kaplan Fox & Kilsheimer LLP | (S.D.N.Y.) (Jun. 2009) (Dkt. No. 246-4) | \$550 - \$775 |
| <i>In re Merrill Lynch & Co. Inc., Securities, Derivatives and ERISA Litig.</i> , No. 07-cv-09633 (LBS) (AJP) (DFE) | Barrack, Rodos & Bacine | (S.D.N.Y.) (Jun. 2009) (Dkt. No. 246-5) | \$525 - \$695 |
| <i>In re Merrill Lynch & Co. Inc., Securities, Derivatives and ERISA Litig.</i> , No. 07-cv-09633 (LBS) (AJP) (DFE) | Berger & Montague, P.C. | (S.D.N.Y.) (Jun. 2009) (Dkt. No. 246-6) | \$460 - \$725 |
| <i>In re Merrill Lynch & Co. Inc., Securities, Derivatives and ERISA Litig.</i> , No. 07-cv-09633 (LBS) (AJP) (DFE) | Pomerantz Haudek Grossman & Gross LLP | (S.D.N.Y.) (Jun. 2009) (Dkt. No. 246-7) | \$525 - \$830 |
| <i>In re Merrill Lynch & Co. Inc., Securities, Derivatives and ERISA Litig.</i> | Murray, Frank Sailer LLP | (S.D.N.Y.) (Jun. 2009) (Dkt. No. 246-8) | \$675 - \$750 |

| | | | |
|--|------------------------------------|--------------------------------------|---------------|
| <i>Litig.</i> , No. 07-cv-09633 (LBS) (AJP) (DFE) | | | |
| <i>In re Telik, Inc. Secs. Litig.</i> , No. 07 Civ. 04819 (CM) | Bernstein Liebhard & Lifshitz, LLP | (S.D.N.Y.) (Aug. 2008) (Dkt. No. 72) | \$700 - \$750 |

Miller Decl. (Supporting Fee Orders, Exhibit 26(D)) at ¶88.⁵⁹

- c. Judge West considered the empirical data presented regarding national complex litigation law firms submitted by Miller and held “*the collective empirical data and competent evidence submitted demonstrates the reasonableness of the hourly rates submitted by Class Counsel here. See Reirdon Fee Order at ¶6(oo).*” *Chieftain* (Supporting Fee Orders, Exhibit 26) at ¶6(nn). (The hourly rates approved by Judge West are set forth in the table below.)⁶⁰
- d. The Coalition of Oklahoma Surface and Mineral Owners (COSMO) researches and tracks approved hourly rates in complex oil and gas accounting class actions in Oklahoma. COSMO’s report titled “*Recent Reported Lodestar Rates in Oil and Gas Class Actions in Oklahoma (Both State and Federal Courts)*” (“COSMO’s Hourly Rate Tracking Report”) was introduced by Class Counsel. COSMO’s Hourly Rate Tracking Report summarizes the approved hourly rates for Senior Attorneys in complex oil and gas class actions in Oklahoma in 2017 and 2018 of \$550 to \$900 per hour.⁶¹

| Recap of Recently Reported (2017-2018) Hourly Rates Approved in Oil & Gas Royalty Accounting Class Actions in Oklahoma | | | | |
|--|---------------------|-----------------|-------------------|---------------------------|
| Number of Law Firms | Number of Attorneys | Category | Hourly Rate Range | Number of Case References |
| 7 | 14 | Senior Attorney | \$550 to \$900 | 2 (See Below) |
| 7 | 20 | Attorney | \$350 to \$700 | 2 (See Below) |
| 4 | 16 | Paralegal | \$90 to \$300 | 2 (See Below) |

⁵⁹ B&S Declaration, ¶100.

⁶⁰ B&S Declaration, ¶101.

⁶¹ B&S Declaration, ¶101.

| Detail of Reported Hourly Rates Reported and Approved in Recent Oil & Gas Royalty Accounting Class Actions | | | | |
|---|-----------------------------|-----------------|--------------------|---|
| Law Firm | Attorney | Category | Hourly Rate | Case Reference |
| Barnes & Lewis (OK) | Robert Barnes | Senior Attorney | \$900 | <i>Chieftain v XTO</i> (2018 Ex 26) |
| Gunderson Sharp, LLP (TX) | David E. Sharp | Senior Attorney | \$900 | <i>Chieftain v XTO</i> (2018 Ex 26) |
| Barnes & Lewis (OK) | Patranell Lewis | Senior Attorney | \$875 | <i>Chieftain v XTO</i> (2018 Ex 26) |
| Lawrence R. Murphy, Jr., PC (OK) | Larry Murphy | Senior Attorney | \$875 | <i>Chieftain v XTO</i> (2018 Ex 26) |
| Nix, Patterson & Roach (TX) | Bradley Beckworth | Senior Attorney | \$875 | <i>Chieftain v XTO</i> (2018 Ex 26) |
| Nix, Patterson & Roach (TX) | Jeffrey Angelovich | Senior Attorney | \$875 | <i>Chieftain v XTO</i> (2018 Ex 26) |
| Whitten Burrage (OK) | Michael Burrage | Senior Attorney | \$875 | <i>Chieftain v XTO</i> (2018 Ex 26) |
| Gunderson Sharp, LLP (KS) | Rex A. Sharp | Senior Attorney | \$850 | <i>Chieftain v XTO</i> (2018 Ex 26) |
| Gunderson Sharp, LLP (KS) | Joseph R. Gunderson | Senior Attorney | \$850 | <i>Chieftain v XTO</i> (2018 Ex 26) |
| Gunderson Sharp, LLP (KS) | Barbara Frankland | Senior Attorney | \$725 | <i>Chieftain v XTO</i> (2018 Ex 26) |
| Brickell & Associates PC (OK) | Bradley D. Brickell | Senior Attorney | \$650 | <i>Bank of Am v ElPaso</i> (2017 Ex 28) |
| McNamara, Inbody & Parrish | Stephen McNamara | Senior Attorney | \$550 | <i>Bank of Am v ElPaso</i> (2017 Ex 28) |
| McNamara, Inbody & Parrish | Brian Inbody | Senior Attorney | \$550 | <i>Bank of Am v ElPaso</i> (2017 Ex 28) |
| McNamara, Inbody & Parrish | Gil Parrish | Senior Attorney | \$550 | <i>Bank of Am v ElPaso</i> (2017 Ex 28) |
| Gunderson Sharp, LLP (KS) | Ryan C. Hudson | Attorney | \$700 | <i>Chieftain v XTO</i> (2018 Ex 26) |
| Gunderson Sharp, LLP (KS) | Larkin Walsh | Attorney | \$700 | <i>Chieftain v XTO</i> (2018 Ex 26) |
| Nix, Patterson & Roach (TX) | Partner | Attorney | \$700 | <i>Chieftain v XTO</i> (2018 Ex 26) |
| Benson Law Firm (OK) | Loyd L. Benson | Attorney | \$550 | <i>Bank of Am v ElPaso</i> (2017 Ex 28) |
| Branch Law Firm (NM) | Cindy Zedalis | Attorney | \$550 | <i>Bank of Am v ElPaso</i> (2017 Ex 28) |
| Branch Law Firm (NM) | Turner Branch | Attorney | \$550 | <i>Bank of Am v ElPaso</i> (2017 Ex 28) |
| Branch Law Firm (NM) | Margaret Branch | Attorney | \$550 | <i>Bank of Am v ElPaso</i> (2017 Ex 28) |
| Law Office of Brian K Branch (NM) | Brian Branch | Attorney | \$550 | <i>Bank of Am v ElPaso</i> (2017 Ex 28) |
| Law Office of Karen Aubrey (NM) | Karen Aubrey | Attorney | \$550 | <i>Bank of Am v ElPaso</i> (2017 Ex 28) |
| Stan A Koop Lawyer (OK) | Stan Koop | Attorney | \$550 | <i>Bank of Am v ElPaso</i> (2017 Ex 28) |
| Stephen Beam, P.C. (OK) | Stephen Beam | Attorney | \$550 | <i>Bank of Am v ElPaso</i> (2017 Ex 28) |
| Brickell & Associates PC (OK) | Stacey Smith | Attorney | \$500 | <i>Bank of Am v ElPaso</i> (2017 Ex 28) |
| Brickell & Associates PC (OK) | Christine Fritz | Attorney | \$500 | <i>Bank of Am v ElPaso</i> (2017 Ex 28) |
| Brickell & Associates PC (OK) | Michael Kelly | Attorney | \$500 | <i>Bank of Am v ElPaso</i> (2017 Ex 28) |
| Brickell & Associates PC (OK) | Timothy Prentice | Attorney | \$500 | <i>Bank of Am v ElPaso</i> (2017 Ex 28) |
| Nix, Patterson & Roach (TX) | Associates- 6-plus years | Attorney | \$500 | <i>Chieftain v XTO</i> (2018 Ex 26) |
| Gunderson Sharp, LLP (KS) | Scott Goodger | Attorney | \$475 | <i>Chieftain v XTO</i> (2018 Ex 26) |
| Nix, Patterson & Roach (TX) | Associates- 4-6 years | Attorney | \$450 | <i>Chieftain v XTO</i> (2018 Ex 26) |
| Nix, Patterson & Roach (TX) | Associates- 2-4 years | Attorney | \$400 | <i>Chieftain v XTO</i> (2018 Ex 26) |
| Nix, Patterson & Roach (TX) | Associates- 1st year | Attorney | \$350 | <i>Chieftain v XTO</i> (2018 Ex 26) |
| Nix, Patterson & Roach (TX) | Project Associate (Manager) | Paralegal | \$300 | <i>Chieftain v XTO</i> (2018 Ex 26) |
| Nix, Patterson & Roach (TX) | Project Associate | Paralegal | \$275 | <i>Chieftain v XTO</i> (2018 Ex 26) |
| Nix, Patterson & Roach (TX) | Senior Paralegal | Paralegal | \$275 | <i>Chieftain v XTO</i> (2018 Ex 26) |
| Nix, Patterson & Roach (TX) | Paralegal | Paralegal | \$250 | <i>Chieftain v XTO</i> (2018 Ex 26) |
| Barnes & Lewis (OK) | Legal Assistant | Paralegal | \$200 | <i>Chieftain v XTO</i> (2018 Ex 26) |
| Gunderson Sharp, LLP (KS) | Marsha Duea | Paralegal | \$200 | <i>Chieftain v XTO</i> (2018 Ex 26) |
| Gunderson Sharp, LLP (KS) | Vanessa Noah | Paralegal | \$200 | <i>Chieftain v XTO</i> (2018 Ex 26) |
| Gunderson Sharp, LLP (KS) | Sheri Squaires | Paralegal | \$200 | <i>Chieftain v XTO</i> (2018 Ex 26) |
| Gunderson Sharp, LLP (KS) | Debbie Schick | Paralegal | \$200 | <i>Chieftain v XTO</i> (2018 Ex 26) |
| Gunderson Sharp, LLP (KS) | Nicolle Phifer | Paralegal | \$175 | <i>Chieftain v XTO</i> (2018 Ex 26) |
| Gunderson Sharp, LLP (KS) | Alex Sharp | Paralegal | \$175 | <i>Chieftain v XTO</i> (2018 Ex 26) |
| Gunderson Sharp, LLP (KS) | Cindy Hartig | Paralegal | \$175 | <i>Chieftain v XTO</i> (2018 Ex 26) |
| Gunderson Sharp, LLP (KS) | Renee Ballard | Paralegal | \$150 | <i>Chieftain v XTO</i> (2018 Ex 26) |
| Bank of America v ElPaso (OK) | 3 Paralegals | Paralegal | \$90 | <i>Bank of Am v ElPaso</i> (2017 Ex 28) |

100. The Court finds a reasonable lodestar in this case to be \$9,527,873.75, calculated as follows:

| Summary of Class Counsel's Detailed Time Records | | | | |
|---|-----------------|---|---------------------------------|--------------------------------------|
| Attorney or Paralegal | Title | Total Hours Expended or Estimated To Be Expended | Approved Hourly Rate | "Lodestar" (Hours X Rate) |
| Douglas E. Burns | Senior Attorney | 3,939.67 | \$875 | \$3,447,211.25 |
| Terry L. Stowers | Senior Attorney | 6,526.28 | \$875 | \$5,710,495.00 |
| Kerry Caywood | Attorney | 243.60 | \$500 | \$121,800.00 |
| Angela Caywood Jones | Attorney | 19.30 | \$500 | \$9,650.00 |
| Pamela Moulton | Paralegal | 652.50 | \$275 | \$179,437.50 |
| Tammie Wheeler | Paralegal | 296.40 | \$200 | \$59,280.00 |
| | | 11,677.75 | | \$9,527,873.75 |

101. The Court having found that the thirteen (13) statutory factors, both singularly and collectively, support an award of the Requested Attorneys' Fee, having reviewed the Opinion, and being constrained by the Settlement Term Sheet and Order Approving the Settlement Term Sheet, including Class Counsel's agreement to reduce their request attorneys' fee by \$7,349,923.16 (from \$24,500,094.56 to \$17,150,171.40), finds that a lodestar of \$9,527,873.75, with a lodestar multiplier of 1.8, for a total fee of \$17,150,171.40 represents a fair and reasonable attorneys' fee to be awarded to Class Counsel in this case.⁶²

Conclusions of Law – Attorneys' Fee

102. The Court having found that the thirteen (13) statutory factors, both singularly and collectively, support an award of the Requested Attorneys' Fee, having reviewed the Opinion, and being constrained by the Settlement Term Sheet and Order Approving the Settlement Term Sheet,

⁶² Gum, Tr. p. 194 (“Q: In your opinion, sir, will attorneys be willing to take cases for royalty owners on royalty underpayment in the future if the most they can recover upon victory or settlement is their hourly rate? A: I don't think any attorneys that are worth a darn will do it. You might get somebody who is just looking to fill the day and have something to do maybe, but I think if you're talking guys who know what they're doing and can do it and are skilled and experienced they're going to find a better way to make money than that.”)

including Class Counsel's agreement to reduce their request attorneys' fee by \$7,349,923.16 (from \$24,500,094.56 to \$17,150,171.40), finds an award of \$17,150,171.40 (*i.e.*, 28% of the Sub-Class 1 and Sub-Class 2 Common Fund or a lodestar of \$9,527,873.75, with a lodestar multiplier of 1.8) represents a fair and reasonable attorneys' fee to be awarded to Class Counsel in this case.

Findings of Fact – Class Contribution Award to Class Representatives

103. *“Courts regularly grant incentive awards to compensate named class representatives for the work they performed--their time and effort invested in the case. . . . [I]ncentive awards are justified as payment for reasonable services rendered by class representatives on behalf of the class that were helpful to the litigation.”* Opinion, ¶ 33.

104. *“Oklahoma courts should . . . use a method to calculate an incentive award similar to the lodestar method. Courts should grant incentive awards to class representatives based on the actual time expended on services rendered and other factors similar to those outlined in Oklahoma's class action attorney fee statute pertinent to an incentive award. 12 O.S.Supp.2017, § 2023(G)(4)(e); see Rubenstein, supra note 6, § 17.12 (explaining incentive awards are based on evidence of the particular services performed, the risks encountered, and any other factors pertinent to the award). . . . [In this case], [t]he district court should grant an incentive award based on the actual work performed by the Class Representatives.”* Opinion, ¶ 34.

105. **The Strack Trusts:** From inception of this Litigation until following the certification hearing, Billy Joe Strack was the Trustee of the Patricia Ann Strack Revocable Trust dtd 2/15/99 and The Billy Joe Strack Revocable Trust dtd 2/15/99 (hereafter “Strack Trusts”). Bill Strack passed away on October 22, 2015. Prior to his death, on September 30, 2015, Bill Strack appointed Mark Stephen Strack to serve as Co-Trustee (and upon Bill Strack's death, as Sole Trustee) of the Strack Trusts. Accordingly, Mark Stephen Strack was substituted for Billy Joe

Strack, as the Sole Trustee for the Strack Trusts in this Litigation.⁶³

106. **The Ariola Trusts:** From inception of this Litigation until her death, Hazel Ariola was the Trustee of the Hazel Ariola Living Trust and the Paul Ariola Living Trust (hereafter “Ariola Trusts”). Hazel Ariola passed away on May 2, 2013. As reflected in the Memoranda of Trusts, upon the death of Hazel Ariola, and pursuant to the terms of the Ariola Trusts, Daniela A. Renner became the Sole Successor Trustee of said Trusts. Accordingly, Daniela (“Dee”) A. Renner was substituted for Hazel Ariola, as the Sole Trustee for the Ariola Trusts in this Litigation. (Collectively, the Strack Trusts and Ariola Trusts are referred to as the “Trusts”).⁶⁴

107. The Class Representatives expended extensive time prosecuting this Litigation, from meetings and telephone conferences with Class Counsel, conducting field investigations and interviewing witnesses, attending the formal mediation sessions, providing and reviewing documents, answering interrogatories, preparing for and giving their depositions, preparing affidavits, preparing for testimony at the certification hearing, attending hearings and the certification hearing, reviewing pleadings and appellate briefs, reviewing and evaluating damage models and risk analysis, participating in the strategic decision making for the Litigation, and participating in the settlement negotiation process.⁶⁵

108. Class Counsel have provided the Court with detailed time records of the Class Representatives for this Court’s *in camera* review. The Court finds that Class Representatives have expended substantial time and resources that have benefitted, and will continue to benefit, the Settlement Class in the future. A summary of Class Representatives’ time and expenses are as follows:

⁶³ B&S Declaration, ¶133.

⁶⁴ B&S Declaration, ¶134.

⁶⁵ B&S Declaration, ¶135.

| Trustee of Strack Trusts | Trustee of Ariola Trusts | | | | |
|--------------------------|--------------------------|--|--|--|--|
| 432.55 | 367.70 | Hours Expended or to be Expended in the Litigation | | | |
| \$367.70 | \$2,979.15 | Class Representatives' Expenses | | | |

109. The Court finds that the Class Representatives fully understood their duties as named plaintiffs and class representatives, and at all times have been fully committed to this Litigation for the benefit of the Class.⁶⁶

110. Class Representatives pursued their claims vigorously in the face of strong and dedicated opposition.⁶⁷

111. Class Counsel has testified that Class Representatives would not agree to settle this Litigation until they were sure the Settlement Class would achieve a result they believe to be not only fair and reasonable, but truly a meaningful recovery for the Settlement Class, including modifying Continental's royalty payment practices on a go-forward basis (*i.e.*, during the Future Production Period); all in the face of the very real risk of receiving nothing from Continental.⁶⁸

112. Class Representatives have actively and effectively fulfilled their obligations as representatives of the Settlement Class, complying with all reasonable demands placed upon them during the prosecution and settlement of this Litigation. Indeed, Class Representatives have contributed significantly to the prosecution and resolution of this case and have dedicated hundreds of hours toward assisting in the successful prosecution of this Litigation. At all times, Class Representatives acted in the best interests of the Settlement Class. A good example is the Class Representative's insistence that the settlement contain future provisions requiring that in the absence of express language in leases allowing deductions for Gathering Charges, that Continental

⁶⁶ B&S Declaration, ¶136.

⁶⁷ B&S Declaration, ¶137.

⁶⁸ B&S Declaration, ¶138.

be prohibited from deducting Gathering Charges in the Future Period. Class Representatives will not likely benefit from this provision inasmuch as most of their old leases have expired and any new leases entered into already contain Express NO Deduction clauses which prohibited deductions for Gathering Charges; however, Class Representatives felt obligated to resolve this Litigation in a manner that would best benefit the entire Class.⁶⁹

113. The risk of recovering nothing in this case was very real. In cases alleging violations of the Production Revenue Standards Act, there is always a real and substantial risk that the losing party will be required to pay the attorneys' fees and litigation costs to the prevailing party. Although Continental's fees and litigation costs are unknown to this Court, it clearly is a figure that was many millions of dollars. The Class Representatives assumed this risk, but the remaining Class Members had no risk. This risk alone justifies the Requested Class Representatives' Fee.⁷⁰

114. There is no *quid pro quo* or any type of agreement whatsoever between Class Representatives and Class Counsel that one would support any fee request made by the other.⁷¹

115. Class Representatives have not been compensated for their efforts in representing the Settlement Class.⁷²

116. The Notice stated Class Representative will seek a Case Contribution Award of \$100,000 to each of the four (4) Plaintiff trusts (*i.e.*, a total award of \$400,000) as compensation for their time and effort in this Action.⁷³ However, on or about July 27, 2021, Class Counsel submitted the Supplemental Declaration as required by the Settlement Term Sheet and Order

⁶⁹ B&S Declaration, ¶139.

⁷⁰ B&S Declaration, ¶140.

⁷¹ B&S Declaration, ¶142.

⁷² B&S Declaration, ¶141.

⁷³ B&S Declaration, ¶141.

Approving the Settlement Term Sheet wherein Class Counsel “*reduce[d] their requested case contribution award to the Class Representatives ‘to \$30,000.00 . . . for each of the two individuals, Mark Strack and Daniella Renner, in their capacities as trustees of the four trusts which are named plaintiffs’*”

117. Given their time expended on behalf of the Class and their success, equity requires the Class Representatives be compensated. In light of the risks and result, the Requested Class Representatives’ Fees are reasonable and justified.

Conclusions of Law – Class Contribution Award to Class Representatives

118. The Court having made the factual findings set forth above, having reviewed the Opinion, and being constrained by the Settlement Term Sheet and Order Approving the Settlement Term Sheet, including Class Counsel’s and Class Representatives’ agreement to reduce their requested Class Representative awards, finds an award to Mark Strack of \$30,000.00 and an award to Daniella Renner of \$30,000.00, represents a fair and reasonable fee to be awarded to the Class Representatives in this case.

Findings of Fact – Fee Trust

119. The current amount of the Settlement Funds being held in trust by Class Counsel related to the previous awards of attorneys’ fees and Class Representatives’ incentive awards is \$24,900,094.36 corpus plus accrued interest of \$836,771.93 (as of 5/31/2021) for a total of \$25,336,866.29 (as of 5/31/2021) (the “Fee Trust”).⁷⁴

Conclusions of Law – Fee Trust

120. The Court, having awarded Class Counsel \$17,150,171.40 as a reasonable attorneys’ fee in this case, and having awarded the Class Representatives \$60,000.00 as reasonable

⁷⁴ B&S Supplemental Declaration, ¶9.

Class Representatives' Fees in this case, finds that the remaining Fee Trust corpus of \$7,289,922.86 should be returned to the Class (hereafter "Returned Funds") and considered "Residual Funds" pursuant to the Settlement Agreement and subject to further order of this Court as to its distribution.

121. Pursuant to the Settlement Term Sheet and the Order Approving the Settlement Term Sheet, as well as equity jurisprudence, the Court finds that the interest accrued on the Fee Trust should be and is hereby considered earned by, and is to be prorated as between, Class Counsel, Class Representatives and the Class based upon the award of fees by the Court to Class Counsel and the Class Representatives, and the Returned Funds, summarized as of May 31, 2021 as follows:⁷⁵

| | Fee Trust Corpus | % | Interest | Total |
|--------------------------------|-------------------------|-----------------|---------------------|------------------------|
| Class Counsel | \$17,150,171.40 | 70.000% | \$585,743.95 | \$17,735,915.35 |
| Class Representatives | \$60,000.00 | 0.245% | \$2,049.23 | \$62,049.23 |
| Returned Funds f/b/o the Class | \$7,289,922.96 | 29.755% | \$248,978.75 | \$7,538,901.71 |
| Total Fee Trust | \$24,500,094.36 | 100.000% | \$836,771.93 | \$25,336,866.29 |

Final Adjudications

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, that Class Counsel is awarded the Requested Attorney's Fees of \$17,150,171.40 (*i.e.*, 28% of the Sub-Class 1 and Sub-Class 2 Common Funds or a lodestar of \$9,527,873.75, with a lodestar multiplier of 1.8), to be paid from the Fee Trust.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that Class Representatives Mark Strack and Daniella Renner, as trustees of their respective trusts, are awarded the Requested Class Representatives' Fees of \$60,000.00 (\$30,000.00 each), to be paid from the Fee Trust.

⁷⁵ Accrued interest on the Fee Trust after May 31, 2021, shall be allocated in the same ratios.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that interest earned on the Fee Trust is hereby considered earned, prorated and shall be distributed as between Class Counsel, Class Representatives and the Class as follows:

| | Fee Trust Corpus | % | Interest | Total |
|--------------------------------|-------------------------|-----------------|---------------------|------------------------|
| Class Counsel | \$17,150,171.40 | 70.000% | \$585,743.95 | \$17,735,915.35 |
| Class Representatives | \$60,000.00 | 0.245% | \$2,049.23 | \$62,049.23 |
| Returned Funds f/b/o the Class | \$7,289,922.96 | 29.755% | \$248,978.75 | \$7,538,901.71 |
| Total Fee Trust | \$24,500,094.36 | 100.000% | \$836,771.93 | \$25,336,866.29 |

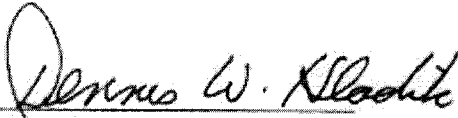
Interest earned on the Fee Trust after May 31, 2021 shall be allocated in the same proportion as set forth in the table.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that \$7,538,901.71, plus prorated accrued interest after May 31, 2021, be transferred from the Fee Trust to the Class Residual Fund maintained by Class Counsel (“Returned Funds”) for the benefit of the Class and subject to further order of the Court as to its distribution.

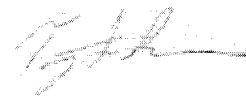
IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that Class Counsel shall work with the Settlement Administrator, Barbara Ley, to formulate, propose, and request the Court approve, within a reasonable time frame, a reasonable plan of action for the distribution of the Returned Funds to the Class Members, less the fees awarded by the Court to Dan McClure pursuant to the Order Approving the Settlement Term Sheet, and less the estimated administration costs for the distribution of the Returned Funds, all to be approved by the Court through a subsequent order.

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 17 day of August, 2021.


The Honorable Dennis Hladik

Approved for Entry:



Class Counsel

IT IS SO ORDERED this ____ day of August, 2021.

The Honorable Dennis Hladik

Approved for Entry:



Class Counsel

CERTIFICATE OF SERVICE BY COURT CLERK

I hereby certify that on or before the 18th day of August, 2021, a Certified Copy of the foregoing was mailed, postage pre-paid, to:

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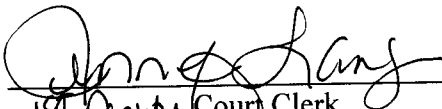
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