

# **EXHIBIT 7**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF OKLAHOMA**

<b>PERRY CLINE, on behalf of</b>	)	
<b>himself and all others</b>	)	
<b>similarly situated,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>Case No. 17-cv-313-JAG</b>
	)	
<b>SUNOCO, INC. (R&amp;M)</b>	)	
<b>and SUNOCO PARTNERS</b>	)	
<b>MARKETING &amp; TERMINALS, L.P.,</b>	)	
	)	
<b>Defendants.</b>	)	

**DECLARATION OF GEOFFREY P. MILLER**

I, Geoffrey P. Miller, declare as follows:

1. I am the Stuyvesant P. Comfort Professor of Law at New York University located in New York, New York. I have been retained to provide an expert opinion as to: (1) the reasonableness of the Attorneys’ Fees requested by Class Counsel; (2) the reasonableness of the Litigation Expenses requested by Class Counsel; (3) the reasonableness of the Administration, Notice, and Distribution Costs requested by Class Counsel; (4) the reasonableness of the Case Contribution Award requested by Class Representative; and (5) the adequacy of the Notice of Motion For Attorney’s Fees From Judgment Fund Pursuant to Rule 23(h). In that capacity, I make the following representations based on my own personal knowledge and experience. If called as a witness, I could and would competently testify to the matters stated herein.

**Background and Qualifications**

2. For more than thirty years I have been involved in class action litigation as a teacher, scholar, attorney, consultant, and expert witness. I have taught a wide range of subjects including civil procedure, law and economics, corporations, compliance and risk management,

property, regulation of financial institutions, land development, securities law, the legal profession, and legal theory. I am author or editor of many books and research articles, including at least a dozen studies of class action law and practice.

3. I am an author of leading empirical studies of attorney fees and expenses in class action cases. My paper, *Attorneys' Fees in Class Action Settlements: An Empirical Study*, 1 J. EMPIRICAL LEGAL STUD. 27 (2004), co-authored with Professor Theodore Eisenberg, was featured in a story on the first business page of the *New York Times*, and was discussed in Congress during debates on the Class Action Fairness Act. In 2010, Professor Eisenberg and I updated the data set for that study to account for five additional years of attorney fees and nearly double the number of cases. See *Attorneys' Fees and Expenses in Class Action Settlements: 1993-2008*, 7 J. EMPIRICAL LEGAL STUD. 248 (2010). Professor Eisenberg, Professor Michael Perino, and I published a study of securities class action attorney fees, *A New Look at Judicial Impact: Attorneys' Fees in Securities Class Actions after Goldberger v. Integrated Resources, Inc.*, 29 WASH. U. J. L. & POL'Y 5 (2009). In December 2016, Professor Eisenberg, Roy Germano and I updated the data set for our 2004 and 2010 studies to account for five additional years of attorney fees in 458 cases through 2013. See Theodore Eisenberg, Geoffrey Miller, and Roy Germano, *Conference: Attorneys' Fees In Class Actions: 2009-2013*, 92 N.Y.U.L. Rev. 937 (2017). My work on attorney fees is frequently cited by numerous courts around the country as authority in class action settlements.<sup>1</sup>

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<sup>1</sup> See, e.g., *In re Yahoo! Inc. Customer Data Sec. Breach Litig.*, No. 16-MD-02752-LHK, 2019 U.S. Dist. LEXIS 15034, at \*55-56 (N.D. Cal. 2019); *Amadeck v. Capital One Fin. Corp. (In re Capital One Tel. Consumer Prot. Act Litig.)*, 80 F. Supp. 3d 781, 797 (N.D. Ill. 2015); *Eubank v. Pella Corp.*, 753 F.3d 718, 719 (7th Cir. 2014); *Bd. of Trs. of Aftra Ret. Fund v. JPMorgan Chase Bank, N.A.*, No. 09 Civ. 686 (SAS), 2012 U.S. Dist. LEXIS 79418, at \*5 n.12 (S.D.N.Y. June 7, 2012); *In re Checking Acct. Overdraft Litig.*, 830 F. Supp. 2d 1330, 1336 n.4 (S.D. Fla. 2011);

4. I have frequently consulted with attorneys to assist with issues pertaining to class certification, class settlement, and awards of class counsel fees. I have offered testimony in class action cases in state and federal courts across the United States, including cases in the Tenth Circuit and Oklahoma. In this Court alone, I have submitted testimony in support of the settlements, attorney fees, litigation expenses, case contribution awards, and notices of proposed settlement in the following matters: (i) *Chieftain Royalty Co. v. XTO Energy, Inc.*, No. 11-cv-29-KEW (E.D. Okla.) (Docket No. 231) (settlement fund of \$80 million; attorney fees of \$32 million using the percentage method and a lodestar cross-check); (ii) *Reirdon v. Cimarex Energy Co. & Cimarex Energy Co. of Colorado*, No. 6:16-cv-00445-SPS (E.D. Okla.) (Docket No. 132) (settlement fund of \$10 million; attorney fees of \$4 million using percentage method); (iii) *Reirdon v. XTO Energy, Inc.*, No. 16-cv-87-KEW (E.D. Okla.) (Docket No. 124) (settlement fund of \$20 million; attorney fees of \$8 million using the percentage methodology and a lodestar cross-check); (iv) *Reirdon v. Cimarex Energy Co.*, No. 6:16-cv-113-KEW (E.D. Okla.) (Docket No. 105) (settlement fund of \$9.5 million; attorney fees of \$3.8 million using the percentage methodology); (v) *Chieftain Royalty Co. v. Newfield Exploration Mid-Continent Inc.*, No. 6:17-cv-00336-KEW (E.D. Okla.) (Docket No. 57) (settlement fund of \$19.5 million; attorney fees of \$7.8 million using the percentage methodology); (vi) *Chieftain Royalty Co. v. Marathon Oil Co.*, No. 17-334-SPS (E.D. Okla.) (Docket No. 82) (settlement fund of \$14.5 million; attorney fees of \$5,980,000.00 using the percentage methodology); (vii) *Donald D. Miller Revocable Family Trust v. DCP Operating Company, LP, et al.*, No. CIV-18-0199-JH (E.D. Okla.) (Docket No. 81) (settlement fund of \$9.9 million; attorney fees of \$3,465,000.00 using the percentage methodology); and (viii) *Rhea v.*

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*Braud v. Transp. Serv. Co. of Ill.*, No. 05-1898c/w05-1977, 2010 U.S. Dist. LEXIS 93433 (E.D. La. Aug. 7, 2010).

*Apache Corp.*, No. 6:14-cv-00433-JH (E.D. Okla. Docket No. 490) (settlement fund of \$25 million; attorney fees of \$10 million using the percentage methodology).

5. I also submitted an expert report and testified on the propriety of class certification before Magistrate Judge Kimberly West in *CompSource Oklahoma v. BNY Mellon, NA*, No. CIV-08-469-KEW (E.D. Okla.) regarding the propriety of class certification under Federal Rule of Procedure 23(a) and (b)(3). Thereafter, the case settled for \$280 million and the Court awarded a fee of \$70 million using the percentage method and no lodestar cross-check. *See* Docket No. 468 (Final Order and Judgment).

6. I have also submitted testimony in the Western District of Oklahoma. Most recently, I submitted a declaration in *Chieftain Royalty Co. v. SM Energy Co.*, No. 18-cv-1225-J (W.D. Okla.), where Judge Bernard Jones granted final approval and awarded Class Counsel a 40% fee. I also submitted a declaration and testified before the Honorable David Russell, United States District Judge for the Western District of Oklahoma, in support of the settlement, request for attorney fees, reimbursement of litigation expenses, and case contribution award in *Chieftain Royalty Co. v. QEP Energy, Co.*, No. CIV-11-212-R (W.D. Okla. 2013) (Docket No. 152; Final Fairness Hearing Transcript). In *QEP*, Judge Russell granted final approval of the settlement (including the future benefits) and awarded a fee of \$46.5 million, which represented approximately 39% of the cash portion of a \$155 million settlement. *See* Docket No. 182.

7. I also submitted an expert report and testified on class certification in *City of Blackwell v. Freeport-McMoran Copper & Gold*, No. CJ-2009-15-B, Kay County, Oklahoma District Court, in which the court certified the class and the case was later settled.

8. Further information on my background and qualifications is set forth in my resume, attached hereto as **Exhibit A**.

**Summary of Opinion**

9. For the reasons stated below, my opinions are as follows:

(a) Counsel's request for an award of 40% of the Judgment Common Fund, which may be offset by the stipulated amount of statutory fees, is reasonable in light of the facts and circumstances;

(b) Counsel's request for reimbursement of up to \$850,000.00 in Litigation Expenses incurred in successfully prosecuting this Litigation, which may be offset by the stipulated amount of statutory costs, is reasonable in light of the facts and circumstances;

(c) Counsel's request for payment of up to \$650,000.00 in Administration, Notice, and Distribution Costs is reasonable in light of the facts and circumstances;

(d) Class Representative's request for a Case Contribution Award of up to \$500,000.00 to as compensation for his time and effort is reasonable in light of the facts and circumstances; and

(e) The manner of distribution and form of the Notice of Motion For Attorney's Fees From Judgment Fund Pursuant to Rule 23(h) is fair and adequate.

**Materials Reviewed**

10. In preparing this opinion, I have reviewed an extensive compilation of pleadings and other documents in this case, including but not limited to those listed in **Exhibit B**. I also have consulted with Class Counsel, conducted legal research, and analyzed other class action cases. And, I have relied on my extensive personal experience as a professor, lawyer, and expert witness in this area.

**Summary of the Litigation**

11. Based on my review of the relevant pleadings and other documents in this case, the following is a brief overview of the litigation.

12. On July 7, 2017, Perry Cline (“Class Representative” or “Plaintiff”), initiated this Action by filing his Original Petition in the District Court of Seminole County, Oklahoma, against Defendants. On August 14, 2017, Defendants filed a Notice of Removal, removing this Action to federal court under the Class Action Fairness Act. Dkt. No. 2. On August 21, 2017, Defendants filed their Answer to Plaintiff’s Original Petition. Dkt. No. 23. Thereafter, the parties engaged in substantial discovery, including the filing of multiple motions pertaining to various discovery issues.

13. On June 14, 2019, Plaintiff filed his Motion to Certify Class, to Appoint Class Representative, and to Appoint Class Counsel and Brief in Support (Dkt. No. 91), to which Defendants responded on August 14, 2019. Dkt. No. 105. The Court, by Order dated October 3, 2019, granted Plaintiff’s Motion to Certify Class. Dkt. No. 127.

14. On August 8, 2019, Defendants filed a Motion to Dismiss for Lack of Subject Matter Jurisdiction and Brief in Support (Dkt. No. 103), to which Plaintiff responded on August 22, 2019. Dkt. No. 109. The Court, by Order dated October 3, 2019, denied Defendants’ Motion to Dismiss. Dkt. No. 123.

15. On October 11, 2019, Class Representative filed his Motion to Approve the Form and Manner of Class Notice (Dkt. No. 136), to which Defendants responded on October 25, 2019 (Dkt. No. 144). The Court, by Order dated November 1, 2019, granted Class Representative’s Motion to Approve the Form and Manner of Class Notice, as modified pursuant to a telephonic hearing with the Court on October 31, 2019. Dkt. No.159.

16. Certain putative class members requested exclusion as set forth in the notices. *See* Dkt. No. 299 at ¶7(a) (citing Dkt. No. 271).

17. On August 17, 2020, following the bench trial held on December 16-19, 2019, the Court issued its Findings of Fact and Conclusions of Law in which it awarded the Class: (1) actual damages in the amount of the interest owed on the late payments, totaling \$80,691,486.00; and (2) punitive damages in the amount of \$75,000,000. *See Cline v. Sunoco, Inc. (R&M)*, 479 F. Supp. 3d 1148, 1181-82 (E.D. Okla. 2020); *see also* Judgment (Dkt. No. 308). Following the Court's ruling, Sunoco moved for a new trial and to alter/amend the judgment. Dkt. Nos. 322-323. Both motions were denied.

18. On September 8, 2020, the parties filed a Joint Motion to Stay Proceedings on Attorney Fees and Costs Pending Appeal. Dkt. No. 316. The Court, by order dated September 10, 2020, granted the parties' Joint Motion, and ordered that the deadlines for motions and other briefing on attorney fees and costs be stayed until after the Tenth Circuit entered its mandate in the appeal from the Court's final judgment. Dkt. No. 318.

19. On October 30, 2020, the Court issued its Plan of Allocation Order. Dkt. No. 339. That same day, Sunoco filed its notice of appeal, attacking the finality of the Court's Final Judgment. Dkt. No. 340.

20. On November 1, 2021, the Tenth Circuit dismissed the appeal and held that Sunoco had failed to meet its burden to establish appellate jurisdiction. *See* Dkt. No. 010110598491 at 5.

21. On November 11, 2021, Sunoco filed a Petition for Rehearing and Rehearing En Banc. In the alternative, Sunoco asked the Tenth Circuit to consider both Petitions to be a Petition for Mandamus asking the Tenth Circuit to order this Court to take additional steps to make its judgment final. The Tenth Circuit denied Sunoco's Petitions on November 29, 2021. *See* Dkt. Nos. 010110603626 & 010110610992.

22. On December 1, 2021, Sunoco filed a Motion for Stay of Issuance of the Mandate and Petition for Writ of Mandamus. Dkt. No. 010110612985. The Tenth Circuit denied Sunoco's Motion for Stay of Issuance of the Mandate by Order dated December 3, 2021. Dkt. No. 010110613900.

23. On February 2, 2022, the Tenth Circuit denied Sunoco's Petition for Writ of Mandamus. Dkt. No. 010110640586.

24. On February 3, 2022, the Court ordered Class Representative and Class Counsel to file their (i) Statutory Costs and Fees Motion and (ii) the instant Motion on or before March 7, 2022. Dkt. No. 368.

25. On February 10, 2022, Defendants filed their Opposed Motion to Modify the Plan of Allocation Order and Issue a Rule 58 Judgment and Brief in Support. Dkt. No. 372.

26. On February 16, 2022, Defendants filed their Opposed Motion to Enjoin Enforcement of the Judgment and any Actions in Support Thereof and Brief. Dkt. No. 376.

27. On March 7, 2022, Class Representative filed his Motion for Statutory Costs and Fees Pursuant to 52 O.S. § 570.14 in the Stipulated Amount of \$5,000,000.00. Dkt. No. 389. Also on March 7, 2022, Class Representative filed his Motion to: (1) Approve Form and Manner of Notice to the Certified Class of Class Counsel's Motion for Attorney's Fees and Litigation Expenses, and Class Representative's Motion for Case Contribution Award Pursuant to Rule 23(h); and (2) Approve Proposed Schedule. Dkt. No. 390.

28. On March 31, 2022, the Court stayed enforcement for 60 days to allow the parties an opportunity to mediate the dispute. Dkt. No. 405. On April 6, 2022, the Court denied Defendants' Motion to Modify the Plan of Allocation Order and Issue a Rule 58 Judgment. Dkt. No. 407.

29. On April 28, 2022, Sunoco filed its Petition for Writ of Certiorari with the U.S. Supreme Court.

30. On April 29, 2022, Sunoco filed notices of appeal regarding the Court's orders on their motion to enjoin and motion to modify. Dkt. Nos. 408-409.

31. On June 24, 2022, Sunoco filed a notice of appeal regarding the Court's order denying Defendants' motion to enjoin enforcement of the judgment and any actions in support. Dkt. No. 422.

32. On August 4, 2022, the Tenth Circuit dismissed the appeal regarding Defendants' motion to enjoin execution of the underlying monetary judgment. Dkt. No. 429.

33. On October 3, 2022, the U.S. Supreme Court denied Sunoco's Petition for Writ of Certiorari. Class Representative immediately commenced garnishment proceedings thereafter. *See* Dkt. Nos. 452-482, 486-500, 527.

34. On December 21, 2022, upon agreement of the parties, Class Representative filed his Notice of Voluntary Dismissal of Garnishment Proceedings Without Prejudice and Notice of Withdrawal of Motion for Entry of Order and Notice of Default Under 12 Okla. Stat. § 1179. Dkt. No. 606.

35. On January 3, 2023, Defendants likewise filed their Notice of Withdrawal of Opposition regarding motion to set deadlines to file motion for attorney fees, expenses, and case contribution award. Dkt. No. 608.

36. On January 6, 2023, the Court entered an Order Scheduling Hearing on Motion for Fees and Costs for February 28, 2023. Dkt. No. 610.

**The Law Governing Class Counsel's Fee**

37. In a certified class action such as this, "the court may award reasonable attorneys'

fees and nontaxable costs that are authorized by law.” FED. R. CIV. P. 23(h). Here, the right to, and calculation of, reasonable attorney fees are controlled by Oklahoma state law. *See Chieftain Royalty Co. v. EnerVest Energy Institutional Fund XIII-A*, L.P., 888 F.3d 455, 460-63 (10th Cir. 2017).

38. Oklahoma law aligns with Tenth Circuit law in that it gives trial courts the discretion to utilize the percentage-of-the-fund method to determine a reasonable fee. *See Strack v. Continental Res.*, 507 P.3d 609, 612, 614-15 (Okla. 2021); *Gottlieb v. Barry*, 43 F.3d 474, 483 (10th Cir. 1994). The goal under Oklahoma law is to arrive at a reasonable fee in light of the facts and circumstances of the particular case. *Strack*, 507 P.3d at 616; *Gottlieb*, 43 F.3d at 482.

39. Under Oklahoma law, Class Counsel’s right to recover fees from the common fund is separate from Class Representative’s right to recover the costs of suit, including attorney fees, from Defendants under a prevailing-party, fee-shifting statute. *See Okla. ex rel. Okla. Bar Ass’n v. Weeks*, 969 P.2d 347, 356 (Okla. 1998). And, under Oklahoma law, where a prevailing-party, fee-shifting statute co-exists with a contingency fee agreement and a common fund recovery, any statutory fees belong to the plaintiff, not the attorney. *Id.* A plaintiff thus may (1) win a fee award or negotiate or settle for an amount of statutory fees to be paid to the plaintiff as the prevailing party; and (2) any such amount must be used to offset the amount the plaintiff owes under the contingent fee arrangement. *Id.* Oklahoma’s two-step approach follows the U.S. Supreme Court’s holding in *Venegas v. Mitchell*, which held that a statutory fee-shifting provision “does not interfere with the enforceability of a contingent-fee contract.” 495 U.S. 82, 90 (1990). This two-step approach is also contemplated by the Court’s Plan of Allocation Order.<sup>2</sup> This approach makes

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<sup>2</sup> *See* Dkt. No. 339 at ¶1(a) (defining the term “Judgment Fund” to include “any attorneys’ fees, expenses, costs, and pre- and post-judgment interest as have been or may be awarded to the class

practical sense because, as the case law explains, the statutory fee belongs to the client, not the lawyers; and if there is a contingent fee, and that fee is *more* than the statutory fee, then the attorney is still entitled to the contingent fee less the statutory fee.

40. The first step in this process concerns statutory fees under Oklahoma law. The petition in this case pled causes of action pursuant to the Oklahoma Production and Revenue Standards Act (the “PRSA”). Under that statute, “[t]he prevailing party in any court proceeding brought pursuant to the [PRSA] shall be entitled to recover the costs of the suit, including but not limited to reasonable attorney and expert witness fees.” *See* 52 O.S. § 570.14(C)(2); *H.B. Krug v. Helmerich & Payne, Inc.*, 2015 OK 74, ¶14, 362 P.3d 205, 212 (“Should a violation of the Act occur, recovery for damages, interest, court costs, and attorneys’ fees and other expenses is to be sought in the district courts.”); *Tarrant v. Capstone Oil & Gas Co.*, 2008 OK CIV APP 17, ¶18, 178 P.3d 866, 871 (“The PRSA allows for recovery of unpaid royalties with interest, damages for injury to business or property arising from the violation, litigation costs, and attorney fees.”). Based on my review of the relevant pleadings, orders, and other materials in this Action, it appears clear that Class Representative undoubtedly is the “prevailing party” under the PRSA and thus, is entitled to the fees allowed thereunder. Rather than litigate this issue, however, Class Representative “determined that it was in the best interests of the Class to attempt to negotiate a stipulated amount for such fees and costs rather than to engage in protracted satellite litigation and appeals over these issues which, given their conduct to date, [Class Counsel] believed Defendants

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representative and the class”); *see also id.* at ¶1(c) (defining the “Net Class Award” to mean the Judgment Fund, “less any: (i) case contribution award to Class Representative; (ii) attorneys’ fees, expenses, and costs awarded from the Judgment Fund to counsel for the class Representative and the class; (iii) compensation and expenses paid or reimbursed to the Judgment Administrator; and (iv) any additional administrative expenses that may be charged against the Judgment Fund at the Court’s direction.”).

would attempt to use as yet another basis to resurrect their dismissed appeal.” NP Decl. at ¶28; Cline Decl. at ¶25. As set forth in Class Representative’s Statutory Costs and Fees Motion, filed on March 7, 2022, the Parties negotiated a Stipulation where Defendants agreed to pay \$5 million into the Judgment Common Fund to satisfy their obligation as the losing party under the PRSA. Since the statutory fee is owned by Class Representative, not Class Counsel, Class Representative had the right to negotiate or settle that statutory amount, just as he did here. *See, e.g., Weeks*, 969 P.2d at 358. It is my understanding Defendants have deposited this amount with the Judgment Administrator.

41. The second step of the process concerns the award of fees from the Judgment Common Fund. That issue is now before this Court. Class Counsel proposes that the fee awarded from the Judgment Common Fund as a percentage of the class recovery be offset by the stipulated amount of statutory fees under the PRSA (\$4,500,000.00), and only the remainder be paid from the Judgment Common Fund. This is appropriate, in my judgment, because statutory fees should not be added to the “pot” of class recovery on which the percentage fee is calculated. The better course, and that which Oklahoma law follows, is to apply any such fees or costs as a credit to any amounts owed under the contingency agreement (or percentage of the fund method) so that the actual amount paid by the Class itself is reduced by the same amount. *See Weeks*, 969 P.2d at 356 (discussing the “general rule” that statutory fees should be credited against the amount owed to counsel under a contingent-fee agreement, not “treated as an amount in addition to that received or to be received by the attorney”).<sup>3</sup> This offset means the total percentage paid by the Class from the Judgment Common Fund would be approximately 37%.

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<sup>3</sup> For example, where V represents the amount of the Common Fund, W represents the percentage awarded by the Court as attorney fees from the Common Fund, X represents the total amount of

42. In addition to the request for an award of attorney fees, Counsel seeks reimbursement of litigation expenses for expenses not recoverable under the PRSA. As in the case of Counsel's fee request, the amount of litigation expenses awarded from the Judgment Common Fund may be offset by the stipulated amount of statutory costs under the PRSA (\$500,000.00), and only the remainder would be paid from the Judgment Common Fund.

**The Fee Request is Reasonable**

43. On January 6, 2023, the Court entered an Order Scheduling Hearing on Motion for Fees and Costs for February 28, 2023. Dkt. No. 610. Therein, the Court approved a proposed schedule under which Class Representative and Class Counsel must file any requests for approval of Attorney Fees, reimbursement of Litigation Expenses, and a Case Contribution Award no later than 28 days prior to the hearing, which falls on January 31, 2023. Class Counsel and Class Representative now request: (a) Attorney Fees of 40% of the Judgment Common Fund, which may be offset by \$4,500,000.00, the stipulated amount of statutory fees Defendants paid pursuant to the PRSA; (b) reimbursement of up to \$850,000.00 in Litigation Expenses, which may be offset, or reduced, by \$500,000.00, the stipulated amount of statutory costs Defendants paid pursuant to the PRSA; (c) payment of up to \$650,000.00 in Administration, Notice, and Distribution Costs; and (d) a Case Contribution Award of \$500,000.00 to Class Representative as compensation for his time and effort. These requests were set forth in the Notice mailed to Class Members.

**Fee Awards in Common Fund Cases**

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expenses the Court orders to be reimbursed from the Common Fund, and Y equals the total amount of fees and expenses payable from the Common Fund, the Court would first determine the total amount of fees and expenses owed from the Common Fund  $[(V \times W\%) + X = Y]$ , and then apply the \$5,000,000.00 paid in statutory costs and fees to this amount, thus, reducing the total amount of fees and expenses paid out of the Common Fund (Z) by \$5,000,000:  $[Y - \$5,000,000 = Z]$ .

44. Courts have recognized the importance of distinguishing attorney fee awards in common fund cases (like this one) versus statutory fee cases. This point was brought to the forefront when the widely-cited Third Circuit Task Force wrote, “a distinction must be drawn between fund-in-court cases and statutory fee cases since the policies behind the two categories differ greatly.” *Court-Awarded Attorney Fees: Report of the Third Circuit Task Force*, 108 F.R.D. 237, 250 (1985). Expressly relying on that Report, the Tenth Circuit explained:

[C]ommon fund fees are neither intrinsically punitive nor designed to further any statutory public policy. Conversely, statutory fees are intended to further a legislative purpose by punishing the nonprevailing party and encouraging private parties to enforce substantive statutory rights. [citing Third Circuit Task Force Report] ... Thus, unlike statutory fees, which result in a shifting of the fee burden to the losing party, common fund fees result in a sharing of the fees among those benefited by the litigation.

*Brown v. Phillips Petroleum Co.*, 838 F.2d 451, 454 (10th Cir. 1988) (“[t]he award of attorneys’ fees is based on substantially different underlying purposes in a common fund case than in a statutory fee case.”). Because the distinction is an important one in determining what constitutes a reasonable attorney fee, I will address the rationale behind each.

45. The common fund doctrine “is part of the historic equity jurisdiction of the federal courts.” *Sprague v. Ticonic Nat’l Bank*, 307 U.S. 161, 165 (1939). The doctrine embodies the courts’ equitable “power to award counsel fees out of a fund created or preserved through someone’s efforts.” 10 Wright & Miller § 2675 (citing *Trustees v. Greenough*, 105 U.S. 527 (1882); *Central R.R. Banking Co. v. Pettus*, 113 U.S. 116 (1885)). Therefore, it is the court’s jurisdiction “over the fund involved in the litigation” that invokes the court’s equitable power to assess “attorney’s fees against the entire fund, thus spreading fees proportionately among those benefited by the suit.” *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *see also Brown*, 838 F.2d at 454 (“common fund fees result in a *sharing* of the fees among those benefited by the

litigation” because “normally a large number of people or entities benefit from a common fund case.”); *Third Circuit Task Force*, 108 F.R.D. at 250 (fees are taken from the fund based on equitable concerns that those who benefit from the fund should not be unjustly enriched without sharing in the expenses incurred by the successful litigant). That is, in common fund cases, the authority to award attorney fees is entirely unrelated to fee-shifting and arises in equity when the fund is created. *See Boeing*, 444 U.S. at 478.

46. Thus, it is well settled that class counsel who obtain a “common fund” or a “common benefit” settlement for a class, such as the Judgment Common Fund Class Counsel obtained here, are entitled to reasonable attorney fees and reimbursement of expenses. *Gottlieb v. Barry*, 43 F.3d 474, 482 (10th Cir. 1994). Such is based on the theory that “persons who obtain the benefit of a lawsuit without contributing to its costs are unjustly enriched at the successful litigant’s expense.” *Id.* (citing *Boeing*, 444 U.S. at 478). *Boeing* explained, “[t]he common-fund doctrine reflects the traditional practice in courts of equity,” 444 U.S. at 478 (emphasis added), and that a court’s “[j]urisdiction over the fund involved in the litigation allows a court to prevent [] inequity by assessing attorney’s fees against the entire fund[.]” *Id.* “The court’s authority for ... attorney fees stems from the fact that the class-action device is a creature of equity and the allowance of attorney-related costs is considered part of the historic equity power of the federal courts.” 7B Wright & Miller § 1803 (footnote omitted). Without reasonable awards of attorney fees and reimbursement of expenses, there is no incentive for competent counsel to take on the extremely risky, time-consuming, and difficult task of pursuing class actions.

47. In contrast to awards of fees under the common fund doctrine, in fee-shifting cases, fees are assessed against the unsuccessful litigant and awarded to the prevailing party to encourage private enforcement of statutory substantive rights. *Third Circuit Task Force*, 108 F.R.D. at 250.

That is, attorney fees are obtained from the losing party and thus “result in a *shifting* of the fee burden to the losing party.” *See Brown*, 838 F.2d at 454 (emphasis in original).

48. This case involves *both* a fee-shifting component and a common fund component. The petition pled causes of action under the PRSA, which contains a fee-shifting provision that allows prevailing parties to recover certain fees and expenses from the losing party. Class Representative and Class Counsel also obtained a Judgment Common Fund of over \$155 million on behalf of the Certified Class. The Oklahoma Supreme Court has adopted the U.S. Supreme Court’s position that “statutory awards can coexist with private fee arrangements.” *Weeks*, 969 P.2d at 356 (citing *Venegas v. Mitchell*, 495 U.S. 82, 90 (1990)). Thus, both types of fees are appropriate and allowed here.

**Methodologies for Calculating Attorney Fees from the Judgment Common Fund**

49. Oklahoma law, just like the law in this Circuit and most others, allows courts to calculate common-fund, class-action fee awards under the percentage-of-the-fund or the lodestar approach. *See Strack*, 507 P.3d at 612, 615; *compare with Gottlieb v. Barry*, 43 F.3d 474, 483 (10th Cir. 1994); *see also Strack*, 507 P.3d at 515, n.6 (“We recognize that courts in nearly every circuit either mandate or allow the percentage approach in class action common fund cases.” (collecting cases from the 1st, 2nd, 3rd, 5th, 6th, 7th, 8th, 9th, 10th, and 11th Circuits)). Oklahoma law, like several circuits, also encourages—but does not mandate—that courts compare the results using a “cross-check” to confirm the reasonableness of their awards. *See Strack*, 507 F.3d at 617 (“[C]ourts should ensure the reasonableness of the fee award involving a common fund by comparing the fee based on a percentage calculation to what the lodestar approach would produce.” (citing 1 Alba Conte, *Attorney Fee Awards* § 2:6, at 69, 78 (3d ed. 2004); 4 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions* § 13:80, at 496-97 (4th ed. 2002))).

50. When the trial court uses the percentage method, it acts as the *de facto* fiduciary for the class, and is required to consider a list of 13 equitable factors closely resembling the list derived for federal courts in *Johnson v. Georgia Highway Express*, plus a thirteenth factor (risk of recovery). See *Strack*, 507 P.3d at 615-16. Applicable considerations under 12 O.S. § 2023(G)(4)(e) include: (1) time and labor required, (2) the novelty and difficulty of the questions presented by the litigation, (3) the skill required to perform the legal service properly, (4) the preclusion of other employment by the attorney due to acceptance of the case, (5) the customary fee, (6) whether the fee is fixed or contingent, (7) time limitations imposed by the client or the circumstances, (8) the amount in controversy and the results obtained, (9) the experience, reputation and ability of the attorney, (10) whether or not the case is an undesirable case, (11) the nature and length of the professional relationship with the client, (12) awards in similar causes, and (13) the risk of recovery in the litigation. 12 OKLA. STAT. § 2023(G)(4)(e).

51. Because Oklahoma law aligns with Tenth Circuit law, which allows the calculation of fees under the percentage method, many decisions by federal courts in Oklahoma award fees based on a percentage calculation alone, without performing a lodestar cross-check. See, e.g., *McClintock v. Enterprise Crude Oil, LLC*, No. 16-cv-136-KEW (E.D. Okla. Mar. 26, 2021) (Dkt. No. 120 at 5-6); *McClintock v. Continuum Producer Services, L.L.C.*, No. 17-cv-259-JAG (E.D. Okla. June 4, 2020) (Dkt. No. 61 at 5-6); *Chieftain Royalty Co. v. Marathon Oil Co.*, No. CIV-17-334-SPS (E.D. Okla. March 8, 2019) (Dkt. No. 120 at 5-6); *Reirdon v. Cimarex Energy Co.*, No. 16-CV-113-KEW (E.D. Okla. Dec. 18, 2018) (Dkt. No. 105 at 5-6); *Cecil v. BP America Production*, No. 16-CV-410-KEW (E.D. Okla. Nov. 19, 2018) (Dkt. No. 260 at 6); *Chieftain Royalty Co. v. XTO Energy, Inc.*, No. CIV-11-29-KEW (E.D. Okla. Mar. 27, 2018) (Dkt. No. 231 at 6); *Reirdon v. XTO Energy, Inc.*, No. 6:16-CV-00087-KEW (E.D. Okla. Jan. 29, 2018) (Dkt.

No. 124 at 5); *CompSource Oklahoma v. BNY Mellon, N.A.*, No. CIV-08-469-KEW, 2012 U.S. Dist. LEXIS 185061, at \*23 (E.D. Okla. Oct. 25, 2012) (“A majority of circuits recognize that trial courts have the discretion to award fees based solely on a percentage of the fund approach and are not required to conduct a lodestar analysis in common fund class actions.”); *Chieftain Royalty Co. v. Laredo Petro., Inc.*, No. CIV-12-1319-D (W.D. Okla. May 13, 2015) (“In the Tenth Circuit, the preferred approach for determining attorneys’ fees in common fund cases is the percentage of the fund method.”) (Dkt. No. 52 at 5) (the “*Laredo Fee Order*”); *Northumberland County Ret. Sys. v. GMX Res. Inc.*, No. CIV-11-520 (W.D. Okla. July 31, 2014) (“The Court is not required to conduct a lodestar assessment of the hours versus a reasonable hourly rate. Nonetheless, even if such an assessment were made, the Court would reach the same conclusion that the requested fees are reasonable.”) (Dkt. No. 150 at n.1); *Chieftain Royalty Company v. QEP Energy Company*, No. CIV-11-212-R (W.D. Okla. May 31, 2013) (Dkt. No. 182 at 4 n.3); *Naylor Farms, Inc. v. Anadarko OGC Co.*, No. CIV-08-668-R (W.D. Okla. Oct. 5, 2012) (Docket No. 329).

52. Moreover, “[t]he goal in every attorney fee case is not to select a methodology but to arrive at a reasonable fee.” *Strack*, 507 P.3d at 616; *compare with Gottlieb*, 43 F.3d at 482 (“Under either methodology, the fee awarded must be reasonable.”). Reasonableness is a fact-intensive, case-by-case inquiry committed to the sound discretion of the trial court. *See Strack*, 507 P.3d at 614 (“The reasonableness of attorney’s fees and incentive awards depends on the facts and circumstances of each case and is a question for the trier of fact.”); *Brown*, 838 F.2d at 453 (“An award of attorneys’ fees is a matter uniquely within the discretion of the trial judge who has intimate knowledge of the efforts expended and the value of the services rendered.”). Under both Oklahoma and federal law, the court must set forth its findings supporting the award with specificity. *See Strack*, 507 P.3d at 619 (“[A] district court must examine the evidentiary support

for the[ statutory factors] beyond a cursory glance. ... Merely referring to the enhancement factors to be considered under § 2023(G)(4)(e) will not sustain a fee that is not established by evidence.”); *Useton*, 9 F.3d at 853 (requiring district courts to “articulate specific reasons for its findings”).

**Counsel’s Requested Fee is Reasonable Under Oklahoma Law**

53. Class Counsel seek a fee of 40% of the Judgment Common Fund recovered on behalf of the Certified Class. As explained above, this amount may be offset, or reduced, by \$4,500,000.00—the stipulated amount of statutory fees Defendants paid pursuant to the PRSA. Thus, the fee actually sought from the Certified Class will represent approximately 37% of the Judgment Common Fund.

54. As noted above, both the percentage and lodestar methods are embedded in a broader equitable inquiry into whether the requested fee is reasonable under all of the facts and circumstances – an inquiry captured in federal cases by the *Johnson* factors and in Oklahoma state court cases by the factors listed in § 2023. Because these inquiries are essentially overlapping, I will combine them in the paragraphs that follow, but will call out certain issues especially pertinent to the inquiry under state law.

55. Before addressing the specific factors, a word is in order about the evidence presented on this issue. A principal reason for the Court’s rejection of counsel’s fee request in the *Strack* case was what the Oklahoma Supreme Court saw as the “conclusory” showing made by counsel on the § 2023(G)(4)(e) factors, as well as the trial court’s “cursory glance” at the evidence supporting the fee request. This case is different. This Court is not asked to take a “cursory glance” at the evidence pertaining to the reasonableness of counsel’s fee request, nor is it asked to rubber stamp counsel’s submission without performing independent analysis. On the contrary, counsel have presented this Court with ample evidence to support the reasonableness of the request under

the circumstances of this case. Further, this is not like most class action cases that involve a settlement where the trial court often has less interaction with the attorneys prior to settlement than does a court that oversees a trial. Here, the Court had the opportunity to observe both Class Counsel and Defense Counsel in action and had extensive interaction with both. Thus, the Court has a perspective here that does not exist in most reported class action cases.

56. The following analysis walks through each of the reasonableness factors set forth in § 2023 and the reasons why those factors support Counsel’s requested fee under the percentage method. I then turn to an evaluation of the fee under a lodestar cross-check, which further confirms the reasonableness of Counsel’s request.

57. The first factor—the time and labor required—supports the fee request. Class Counsel’s total time in this Litigation will likely exceed 13,377 hours. *See* NP Decl.; RW Decl.; BL Decl.; WB Decl.; Murphy Decl.; BR Decl. While the number of hours incurred is impressive, it is not a controlling factor. The Oklahoma Supreme Court has cautioned that “[f]ees cannot fairly be awarded on the basis of time alone” and time and labor must be considered in conjunction with the other factors. *Oliver’s Sports Center, Inc. vs. Nat’l Std. Ins. Co.*, 1980 OK 120, ¶6, 615 P.2d 291, 294; *Robert L. Wheeler, Inc. v. Scott*, 1989 OK 106, ¶¶6-8, 777 P.2d 394 (time and labor “is not the only relevant factor, and it must be considered in conjunction with the other enumerated criteria....In short, a reasonable attorney’s fee in a given case does not necessarily result from simple multiplication of the hours spent times a fixed hourly rate.”). From my review of the evidence, it is clear to me that the time and labor in this case is substantial and still ongoing. I will not recite every action Class Counsel was required to take over the course of this litigation to arrive where they are today, but suffice it to say, their efforts were exceptional. *See* NP Decl. at ¶¶55-83.

58. The second factor—the novelty and difficulty of the questions presented by the litigation—also supports the requested fee award. The legal and factual issues litigated in this case involved complex and technical issues. The successful prosecution and resolution of the Class’s claims required Class Counsel to work with various experts to analyze complex data to support Plaintiff’s legal theories and evaluate the amount of alleged damages. The fact that Class Counsel litigated such difficult issues against the vigorous opposition of highly skilled defense counsel, and still obtained a significant recovery for the Class, supports the fee request in this case.

59. The third factor—the skill required to perform the legal service properly—also supports the requested fee award. The case required investigation and mastery of complex and technical issues regarding royalty payment practices and policies in Oklahoma. In addition, Defendants are represented by prominent and well-respected counsel, further demonstrating the challenges faced by Class Counsel. Class Counsel’s ability, knowledge and experience significantly contributed to the remarkable and unprecedented Judgment attained in this Litigation.

60. The fourth factor—the preclusion of other employment by Class Counsel—supports the requested fee award. Class Counsel’s law firms are relatively small in size. Thus, when Class Counsel undertakes major litigation, such as this Litigation, this commitment necessarily limits Class Counsel’s ability to undertake other complex litigation. For more than six years, Class Counsel devoted significant time and resources to the Litigation. Therefore, Class Counsel’s willingness to prosecute this Litigation on a contingent fee basis and willingness to advance costs necessarily diverted attorney time and resources from other cases.

61. The fifth factor—the customary fee in similar cases—supports Class Counsel’s fee request. The typical fee award in similar royalty underpayment class actions—that is, class actions brought in Oklahoma on behalf of royalty owners claiming statutory interest or underpayment for

minerals produced from their wells—in federal and Oklahoma state court is 40%. The following chart lists federal court decisions awarding fees in this range in similar Oklahoma federal cases:

Case Name & Judge	Case No./Court	Year Awarded	Common Fund	Fee
<i>Chieftain Royalty Co. v. QEP Energy Co.</i> Hon. David Russell	No. 11-cv-212-R (W.D. Okla. May 31, 2013) (Dkt. No. 182)	2013	\$155,000,000	39%
<i>Cecil v. BP Am. Prod. Co.</i> Hon. Kimberly West	No. 16-CV-00410-KEW (E.D. Okla. Nov. 19, 2018) (Dkt. No. 260)	2018	\$147,000,000	40%
<i>Chieftain Royalty Co. v. XTO Energy Inc.</i> Hon. Kimberly West	No. CIV-11-29-KEW (E.D. Okla. Mar. 27, 2018) (Dkt. No. 231)	2018	\$80,000,000	40%
<i>Rhea v. Apache Corp.</i> Hon. Joe Heaton	No. 6:14-cv-00433-JH (E.D. Okla. June 23, 2022) (Dkt. No. 505)	2022	\$25,000,000	40%*
<i>Hay Creek Royalties, LLC v. Roan Resources LLC</i> Hon. Claire Eagan	No. 19-cv-177-CVE-JFJ (N.D. Okla. April 28, 2021) (Dkt. No. 74)	2021	\$20,200,000	40%
<i>Reirdon v. XTO Energy Inc.</i> Hon. Kimberly West	No. 16-cv-00087-KEW (E.D. Okla. Jan. 29, 2018) (Dkt. No. 124)	2018	\$20,000,000	40%
<i>Allen v. Apache Corp.</i> Hon. Jason Robertson	No. 6:22-cv-00063-JAR (E.D. Okla. Nov. 16, 2022) (Dkt. No. 37)	2022	\$15,000,000	40%*
<i>Chieftain Royalty Co. v. BP Am. Prod. Co.</i> Hon. John Heil	No. 18-cv-54-JFH-JFJ (N.D. Okla. Mar. 2, 2022) (Dkt. No. 180)	2022	\$15,000,000	40%*
<i>Chieftain Royalty Co. v. Marathon Oil Co.</i> Hon. Steven Shreder	No. CIV-17-334-SPS (E.D. Okla. Mar. 8, 2019) (Dkt. No. 120)	2019	\$14,950,000	40%
<i>Chieftain Royalty Co. v. SM Energy Co.</i> Hon. Bernard M. Jones	No. 18-cv-1225-J (W.D. Okla. April 27, 2021) (Dkt. No. 115)	2021	\$10,000,000	40%*
<i>Donald D. Miller Revocable Family Trust v. DCP Operating Company, LP, et al.</i> Hon. Joe Heaton	No. CIV-18-0199-JH (E.D. Okla. May 26, 2021) (Dkt. No. 81)	2021	\$9,900,000	35%*

\* Cases indicated with an asterisk were decided after the Oklahoma Supreme Court's decision in *Strack*.

<i>Reirdon v. Cimarex Energy Co.</i> Hon. Kimberly West	No. 16-cv-113-KEW (E.D. Okla. Dec. 18, 2018) (Dkt. No. 105)	2018	\$9,500,000	40%
<i>McClintock v. Enterprise Crude Oil, LLC</i> Hon. Kimberly West	No. 16-cv-136-KEW (E.D. Okla. Mar. 26, 2021) (Dkt. No. 120)	2021	\$5,900,000	40%
<i>Kernen v. Casillas Operating, LLC</i> Hon. Jodi Dishman	No. CIV-18-00107-JD (W.D. Okla. Jan. 4, 2023) (Dkt. No. 125)	2023	\$2,700,000	40%*

62. Fee awards in similar cases in Oklahoma state courts have followed the same pattern. As the below chart demonstrates the historical trend in Oklahoma state courts—where oil and gas are a major part of the State’s economy and state courts have adjudicated many royalty underpayment cases—has been to award fees of 40% of the common fund. *See Fitzgerald Farms, LLC v. Chesapeake Operating, L.L.C.*, No. CJ-2010-38, 2015 WL 5794008, at \*3 (Okla. Dist. Ct. Beaver Cty. July 2, 2015) (explaining that Oklahoma state courts have demonstrated a “long history of awarding a 40% fee” in oil and gas royalty underpayment class actions). The following chart reports on Oklahoma cases that have awarded fees in this range:

Case Name & Judge	Case No. & Court	Year Awarded	Common Fund	Attorney Fee
<i>Simmons v. Anadarko</i> Hon. Wyatt Hill	CJ-2004-57 Caddo Co.	2008	\$155,000,000	40%
<i>Lobo v. BP</i> Hon. Gerald Riffe	CJ-97-72 Beaver Co.	2005	\$150,000,000	40%
<i>Bank of America, N.A. v. El Paso Natural Gas Co., et al.</i> Hon. Christopher S. Kelly	CJ-2004-45 Washita Co.	2017	\$127,660,000	40%
<i>Fitzgerald Farms, LLC v. Chesapeake Operating, LLC</i> Hon. Jon K. Parsley	CJ-2010-38 Beaver Co.	2015	\$119,000,000	40%
<i>Drummond v. Range</i> Hon. Richard Van Dyck	CJ-2010-510 Grady Co.	2013	\$87,500,000	40%
<i>Sacket v. Great Plains Pipeline Co., et al.</i>	CJ-2002-70 Woods Co.	2009	\$25,000,000	40%

Hon. Ray Dean Linder				
<i>Continental v. Conoco</i> Hon. Richard Perry	CJ-95-739; 2000-356 Garfield Co.	2005	\$23,000,000	40%
<i>Laverty v. Newfield</i> Hon. P. Thomas Thorbrugh	CJ-2002-101 Beaver Co.	2007	\$17,250,000	40%
<i>Robertson/Taylor v. Sanguine</i> Hon. Richard Van Dyck	CJ-02-150 Caddo Co.	2003	\$13,250,606	40%
<i>Taylor v. ChevronTexaco</i> Hon. Gerald Riffe	CJ-2002-104 Texas Co.	2009	\$12,000,000	40%
<i>Cecil v. Ward Petro.</i> Hon. Wyatt Hill	CJ-2010-462 Grady Co.	2014	\$10,000,000	40%
<i>Brown v. Citation</i> Hon. Richard G. Van Dyck	CJ-04-217 Caddo Co.	2009	\$5,250,000	40%
<i>Modrall v. Hamon Operating Co.</i> Hon. James R. Winchester	CJ-94-266 Caddo Co.	1995	\$475,000	40%

63. As such, it is my opinion that the fee request here of 40% is in the range of percentage fees historically awarded in oil and gas royalty cases in Oklahoma federal and state court.

64. While the Oklahoma Supreme Court in *Strack* observed that that a 40% contingency fee “can be excessive,” 507 P.3d at 617, it did not reject this long line of precedents. The *Strack* court recognized, instead, that “[t]he reasonableness of attorney’s fees and incentive awards depends on the facts and circumstances of each case and is a question for the trier of fact.” *Id.* at 614.

65. Notably, as shown in the chart above, Oklahoma federal courts have approved fee awards ranging between 35% and 40% in at least *seven cases* adjudicated after the decision in *Strack* (*Kernen, Rhea, Chieftain v. BP, Miller v. DCP, Hay Creek, and Chieftain v. SM*). These decisions recognize that *Strack* authorizes fees in this range in appropriate cases.

66. Moreover, I find it persuasive that numerous absent class members have filed declarations in support of the fee request here. *See* Declarations of Dan Little (Sagacity); Gina Steffano (Citadel); Kelsie Wagner; Mike Weeks (Pagosa); Rob Abernathy (Chieftain); Robert Gonce (Castlerock); Teresa Beauregard; Betty Woodruff Trust; Michael Kernen; Thomas Blakemore; and Paul Keith Walker (attached as exhibits to the Memorandum of Law in Support of Class Counsel’s Motion for Attorney’s Fees). These declarations all agree that 40% is the market rate for an oil and gas class action such as this, and they all agree that they would not have been able to pursue this case on their own in the absence of a contingent fee contract such as the one here. *See id.*; *see also* NP Decl. at ¶44. And, as Mr. Beckworth notes, two of those absent class members (Rob Abernathy and Dan Little) are highly respected Oklahoma oil and gas attorneys who are royalty owners who have served as class representative. *Id.*

67. In my opinion, the facts and circumstances of the present case call for a fee award consistent with the historical practice in Oklahoma state and federal courts and with the fee awards in the seven post-*Strack* federal court cases cited above. I reach this conclusion for two compelling reasons.

68. *First*, this case involved an extraordinary intensity of litigation and risk, including a full-scale, four-day trial, an appeal to the Tenth Circuit, a petition for a writ of certiorari to the United States Supreme Court, repeated attacks on the judgment, and recalcitrance to paying out on the award that necessitated the filing of garnishment proceedings. As this Court is aware, the great majority of class actions that generate a recovery for the class result in a settlement. A full-scale trial is uncommon, much less a no-holds-barred challenge on appeal.

69. *Second*, and equally importantly, Class Counsel’s efforts generated an exceptional outcome – one of the most outstanding results I have seen in more than thirty years of experience

in this area of the law – in the form \$80,691,486 in compensatory damages coupled with \$75,000,000 in punitive damages. Punitive damages are uncommon in class action cases; and an award of this size is almost unheard of. Even after deducting the requested fee, counsel’s request for reimbursement of expenses, administration fees, and the class representative’s case contribution award, the class stands to receive *substantially more than the total amount of its estimated damages*.

70. In *Donald D. Miller Revocable Family Trust v. DCP Operating Co., LP*, 2021 U.S. Dist. LEXIS 245982, \*19, a post-*Strack* decision, Judge Heaton concluded that a fee award of 35% was warranted “in light of the 93% recovery achieved for the Settlement Class.” Judge Heaton observed that, while the Oklahoma Supreme Court’s opinion in *Strack* did not indicate the percentage of class damages obtained by counsel, “the court assumes it was significantly less than 93% of what was sought.” *Id.* at \*19, n.2.

71. If a 93% recovery warrants a 35% fee, then, in my opinion, a nearly 200% recovery warrants a 40% fee.

72. The sixth factor—the contingent nature of the fee—also supports the fee award requested here. Class Counsel undertook this Litigation on a purely contingent fee basis (with the amount of any fee being subject to Court approval), assuming a substantial risk that the Litigation would yield no recovery and leave them uncompensated. Courts consistently have recognized that the risk of receiving little or no recovery is a major factor in considering an award of attorney fees. There are numerous class actions in which plaintiffs’ counsel expended thousands of hours and yet received no remuneration despite their diligence and expertise. In fact, Class Counsel received no reimbursement for their efforts and resources devoted to litigating several similar royalty underpayment actions in federal court where the courts denied class certification. *See, e.g., Foster*

*v. Apache*, No. CIV-10-0573-HE, 2012 U.S. Dist. LEXIS 116915 (W.D. Okla. Aug. 20, 2012); *Foster v. Merit Energy Co.*, No. CIV-10-758-F, 2012 U.S. Dist. LEXIS 76574 (W.D. Okla. May 14, 2012); *Morrison v. Anadarko Petroleum Co.*, 280 F.R.D. 621 (W.D. Okla. 2012); *Tucker v. BP Am. Prod. Co.*, 278 F.R.D. 646 (W.D. Okla. 2011). Simply put, it would not have been prudent or feasible if Class Counsel were to pursue the case based on normal hourly rates.

73. The seventh factor—any time limitations imposed by the client or circumstances—supports the requested fee award. For more than six years, Class Counsel devoted significant time and resources to the Litigation. Therefore, Class Counsel’s willingness to prosecute this Litigation on a contingent fee basis and willingness to advance costs necessarily diverted attorney time and resources from other cases.

74. The eighth factor is the amount in controversy and the results obtained. In some respects, this is the most important factor of all. *See Tibbetts v. Sight ‘n Sound Appliance Ctrs., Inc.*, 77 P.3d 1042, 1046, 1049-50 (Okla. 2003); *see also Brown*, 838 F.2d at 456 (holding this factor may be given greater weight when “the recovery [is] highly contingent and that the efforts of counsel were instrumental in realizing recovery on behalf of the class.”); *see also, e.g.*, FED. R. CIV. P. 23(h), adv. comm. notes (2003) (“For a percentage approach to fee measurement, results achieved is the basic starting point.”). I find this factor is more strongly supported in this case than in any other case I have had the opportunity to analyze. Indeed, the Class will receive nearly 200% of its highest possible actual damages. As Mr. Beckworth describes:

I have been prosecuting complex cases for much of my career. I’ve been lead counsel in cases where the combined recoveries exceed several billion dollars. But never in my career have I been involved in a case where the class will get more than 100% of their highest possible claimed damages even after all fees, expenses and costs of administration are paid. We all know that class actions often result in settlements with *de minimus* recoveries for each class member. That certainly isn’t the case here.

To the contrary, every member of the Class received all of their principle payments and now they will also receive the maximum amount possible in statutory interest damages—12% compounded annually—plus their share of punitive damages, plus their portion of the statutory attorney’s fees and costs already paid by Defendants, plus accrued interest. The total Judgment awarded to the Class of \$155,691,486.00 is a significant recovery and bestows a substantial economic benefit to the Class. Defendants claimed the Class had no damages and, to the extent they did have damages, Defendants argued that the Class was only entitled to 6% interest. So, the Final Judgment represents more than double any amount Defendants would ever agree they owed the Class. And the Final Judgment represents approximately **200%** of the Class’s highest possible actual damages in the case.

NP Decl. at ¶¶48-49. And, these benefits are guaranteed and automatically bestowed upon the Class. *Id.* at ¶50. As such, I find this factor strongly supports the fee request here.

75. The ninth factor is the experience, reputation, and ability of the attorneys. As discussed in ¶¶101-05, *infra*, Class Counsel consists of some of the most experienced complex litigation attorneys in the country. This factor undoubtedly weighs in favor of the requested fee.

76. The tenth factor—the undesirability of the case—supports the fee request. Class Counsel filed this Litigation more than six years ago understanding it would be protracted and expensive with Class Counsel advancing all costs. Class Counsel undertook substantial risk in devoting significant time and resources representing Plaintiff on a contingency basis in this complex class action when recovery and payment of fees and expenses remained uncertain. As explained above, class counsel in similar cases—including in some instances the attorneys involved here—have expended significant time and resources litigating cases where the courts denied class certification.

77. The eleventh factor—the nature and length of the professional relationship with the client—also supports the fee request. This factor is particularly important here because Class Counsel and Mr. Cline have a unique relationship and Mr. Cline was not a typical class representative. Mr. Beckworth described this relationship as follows:

This is not the kind of class action case where the representative is just a puppet for the lawyers. Class Counsel doesn't work that way; neither do our clients. To the contrary, like all of our class action cases, our clients are as deeply involved in their cases as they are able to be. Here, Mr. Cline was, and remains, heavily involved in this fight for his and other royalty owners' rights.

Mr. Cline is the real McCoy. Perry Cline played football at Oklahoma State University, he is a real American farmer and cowboy, and he and his family have lived on and farmed their land for generations. He may come across as gruff at first, but as Mr. Cline's testimony made clear, he is a sophisticated royalty owner and businessman who is a pillar of his community. And Mr. Cline doesn't back down from a fight. Whether it was testimony about using his truck to block access to his well until Defendants wrote him a check, or his refusal to accept Defendants' efforts to pay him off and instead choosing to stay in the fight for the long-haul to help his fellow royalty owners, Mr. Cline proved he is more than capable of standing up for his rights.

When Mr. Cline realized he needed legal help beyond what he was able to do on his own, he went to his family attorney and then he came to Class Counsel. Mr. Cline negotiated, and we agreed to, a contract to prosecute this case on a fully contingent basis with a fee arrangement of 40% of any recovery obtained for Mr. Cline and/or the Class. Mr. Cline believed this fee arrangement was reasonable at the time he entered into it.

NP Decl. at ¶¶33-35.

78. Mr. Cline fully supports the fee request, *see* Cline Decl. at ¶26, as do numerous absent class members. *See* Declarations of Dan Little (Sagacity); Gina Steffano (Citadel); Kelsie Wagner; Mike Weeks (Pagosa); Rob Abernathy (Chieftain); Robert Gonce (Castlerock); Teresa Beauregard; Betty Woodruff Trust; Michael Kernen; Thomas Blakemore; and Paul Keith Walker (attached as exhibits to the Memorandum of Law in Support of Class Counsel's Motion for Attorney's Fees).

79. The twelfth factor—awards in similar cases—supports the request. As discussed in ¶¶61-71, *supra*, the fee request is reasonable when considered either under the percentage methodology or the lodestar methodology, whether applied under Oklahoma state law or federal common law.

80. The thirteenth factor—the risk of recovery in the litigation—further supports the fee request here. As discussed above and based on my review of the various pleadings in this matter, this Litigation involved complex issues of law and fact that placed the ultimate outcome in doubt. There was no guarantee Plaintiff and the Class would prevail on their legal theories at class certification and/or trial. But they did. And, as discussed further above, by accepting this representation on a contingent basis and advancing all litigation expenses, Class Counsel took on the risk of no payment for their services if a successful recovery was not obtained. Accordingly, I find this factor supports the fee request.

#### **The Lodestar Cross-Check**

81. When conducting a lodestar cross-check, trial courts typically do not conduct the same type of detailed analysis of billing records as they would do in a fee-shifting case; indeed, to do otherwise would in many ways defeat the purpose and efficiency of using the percentage method in the first place. *See 5 Newberg and Rubenstein on Class Actions* § 15:86 (6th ed.) (when used as a cross-check, “courts in nearly every circuit have held that ... they need not scrutinize each individual billed hour, but may instead focus on the general question of whether the fee award appropriately reflects the degree of time and effort expended by the attorneys.”).

82. If the Court chooses to conduct a lodestar cross-check here, under Oklahoma law, the lodestar method has two steps: (1) determine counsel’s base “lodestar” by multiplying the number of hours spent by the applicable hourly rate(s), and (2) determine an appropriate multiplier through consideration of the § 2023 factors. *See Strack*, 507 P.3d at 614. The second step—the multiplier analysis—is mandatory. *See id.* at 616 ([“Section 2023] sets our factors that courts *shall* consider to assess the reasonableness of attorney’s fees.” (emphasis in original)). Essentially, the

Court would look again at the time and labor factor, and each of the factors already analyzed above, to ensure that the requested fee is reasonable.

83. The first element of the lodestar calculation is the number of hours expended. Through my discussions with Class Counsel and my review of relevant documents, it is evident Class Counsel expended significant time and labor to prosecute this litigation. For nearly six years, Class Counsel worked diligently investigating, analyzing, and litigating the Certified Class's claims. Class Counsel reviewed thousands of pages of documents; took numerous depositions; and exchanged written discovery. Class Counsel also engaged in substantial expert discovery, including consulting with, and preparing expert witnesses; preparing expert reports; and accounting review and analysis. In addition, Class Counsel engaged in significant motion practice, which resulted in the Court granting class certification.

84. Class Counsel litigated this case through trial, obtaining an outstanding Judgment, which provides Class Members a substantial cash recovery. As stated above, it is rare to see a class action not only go to trial, but result in a recovery of at least 100% of the class's damages plus punitive damages. Class Counsel's efforts did not stop there. Following entry of the judgment, Class Counsel then had to spend almost two years defending the judgment against multiple appeals to both the Tenth Circuit and U.S. Supreme Court, and also were forced to devote substantial time and effort to garnishment proceedings in order to secure the judgment for the class. Class Counsel continues to defend the judgment in the Tenth Circuit, with argument scheduled for March 21, 2023, and will likely have to do so once again in the U.S. Supreme Court if the Tenth Circuit denies Sunoco's latest appeal. Efforts such as these are extraordinary.

85. In contingency-fee cases like this one, where hourly billing invoices are not submitted to a paying client, Oklahoma courts often have found testimony based on the review of

pertinent case files sufficient. *See, e.g., Whittington, D.O. v. Durant H.M.A., LLC*, 521 P.3d 1281, 1283 (Okla. 2022) (“We conclude that an attorney’s affidavit is sufficiently credible without supplemental testimony.”). For example, the Oklahoma Supreme Court rejected the argument that a fee award was excessive because an attorney “did not submit detailed time records as appellant maintains were required by” *Burk and Oliver’s Sports*, holding instead that “testimony of the expert witnesses” that the contingency agreement was “reasonable for this case” sufficiently supported the trial court’s fee award. *See Root v. Kamo Elec. Co-op*, 1985 OK 8, ¶¶46-47, 699 P.2d 1083; *see also Unterkircher v. Adams*, 1985 OK 96, ¶¶3, 10-11, 714 P.2d 193 (finding attorneys’ and expert witnesses’ testimony that the contingency contract was reasonable in light of the *Burk* and ORPC 1.5(a) factors “ample evidence” to support the trial court’s fee award); *Abel v. Tisdale*, 1983 OK 109, ¶¶6-8, 673 P.2d 836, 838 (finding, after *Burk*, that “testimony of several practicing attorneys” supported time and labor factor under ORPC 1.5(a) and established reasonableness of one-third contingency-fee agreement); *Hamilton v. Telex Corp.*, 625 P.2d 106, 109-10 (Okla. 1981) (finding testimony of attorneys based on examination of “litigation file” and “time records” justified base hourly fee calculation); *Fitzgerald Farms*, 2015 WL 5794008, at \*7-8 (finding counsel’s declaration supplied a summary of class counsel’s hourly fees to support time and labor factor or lodestar analysis).

86. Consistent with the foregoing Oklahoma precedent, Class Counsel is submitting declarations regarding the time they spent litigating this case in support of their fee request that include the number of hours worked. *See* NP Decl.; RW Decl.; BL Decl.; WB Decl.; Murphy Decl.; BR Decl. These declarations show that Class Counsel’s total time in this Litigation will likely exceed 13,377 hours. Class Counsel also provided their detailed time records to me, which are also being filed with the motions.

87. The other element of the lodestar calculation is the hourly rate for the work performed. Class Counsel has provided hourly rates for each attorney and staff member for the services performed for different types of legal work. These rates are “predicated on the standards within the local legal community.” *State ex rel. Burk v. City of Oklahoma City*, 1979 OK 115, 598 P.2d 659, 663; *see also Finnell v. Seismic*, 2003 OK 35, ¶17, 67 P.3d 339, 346 (“An attorney seeking an award must submit to the trial court detailed time records and must offer evidence of the reasonable value of the services performed based on the standards of the legal community in which the attorney practices.”). The legal community in which Class Counsel practices is a national complex litigation firm. *See, e.g., Missouri v. Jenkins*, 491 U.S. 274, 286 (1989) (explaining that, in the lodestar context, courts generally look to the current billing rates of the attorneys in “the relevant marketplace, i.e., ‘in line with those [rates] prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation.’” (quoting *Blum*, 465 U.S. at 896 n.11)). Local rates in Oklahoma include rates charged by national litigation firms when performing class action work in Oklahoma. *Strack, supra*, 507 P.3d 609, 617 n.10.

88. Moreover, the hourly rates submitted are in line with those Class Representative agreed to at the outset of the case. Specifically, in addition to the contractually agreed upon 40% contingent fee market rate, Mr. Cline also negotiated an hourly rate that Class Counsel and additional Plaintiff’s Counsel would bill at in the event this Court determined that it was appropriate to consider Plaintiff’s Counsel’s hourly rates to determine whether any fee request is fair and reasonable or he was able to seek fees as a prevailing party. *See NP Decl.* at ¶39. As Mr. Beckworth states:

To be clear, Mr. Cline did not agree to pay these rates, nor could he afford to. The use of an hourly rate in a contingent fee case is an inefficient endeavor and, to put

it simply, patently unreasonable in the context of commercial litigation. This is so because, unlike our adversaries who work by the hour with no out of pocket expenses, we advance all costs and expenses, work entirely at risk, lose the ability to take on other paying work, and run the risk that we will lose both the value of our time and expenses if we lose. And, in times like these when inflation is high, we cannot pass the added costs of goods, services and labor on to our client. That is, while other hourly firms have dealt with inflation by raising their hourly rates, we cannot do that when we work on a contingent-fee contract.

*Id.*

89. Class Counsel Nix Patterson, LLP (NP) was recently awarded attorney fees using higher hourly rates in Washington State Court, where they serve as outside counsel to the Washington Attorney General's Office in the State's opioid litigation. *State of Washington v. Johnson & Johnson; Janssen Pharmaceuticals, Inc.; Ortho-McNeil-Janssen Pharmaceuticals, Inc., N/K/A Janssen Pharmaceuticals, Inc.; Janssen Pharmaceutica, Inc. N/K/A Janssen Pharmaceuticals, Inc.; and XYZ Corporations 1 through 20*, Case No. NO. 20-2-00184-8 SEA. There, Judge Oishi granted a Fee Petition in favor of NP in the context of a discovery dispute, and awarded fees using the following rates:

<b>Name</b>	<b>Position</b>	<b>Hourly Rate</b>
Jessica Underwood	Attorney	\$650.00
Katherine Beran	Attorney	\$600.00
Drew Pate	Attorney	\$850.00
Brad Beckworth	Attorney	\$1,000.00

*See* Plaintiff State of Washington's Fee Petition Pursuant to Order Denying Defendants' Motion to Compel Responses to First Set of Interrogatories, attached hereto as Exhibit C; *see also* Order Granting the State of Washington's Fee Petition, attached hereto as Exhibit D. These hourly rates are lower than the rates reported by NP in the present case, which range from \$875.00 for senior partner Brad Beckworth, to \$400.00 for first-year associate attorneys.

90. The hourly rates submitted by Class Counsel here are in line with fee awards approved by Oklahoma federal courts. *See, e.g., Kernan v. Casillas Operating Co.*, No. CIV-08-

00107-JD (W.D. Okla.) (Docket No. 125); *Allen v. Apache Corp.*, No. 6:22-cv-00063-JAR (E.D. Okla.) (Docket No. 37); *Rhea v. Apache Corp.*, No. 6:14-cv-00433-JH (E.D. Okla.) (Dkt. No. 505); *White Family Minerals, LLC v. EOG Resources, Inc.*, No. 19-cv-409-KEW (E.D. Okla.) (Docket No. 59); *Chieftain Royalty Co. v. BP America Production Co.*, No. 18-CV-54-JFH-JFJ (N.D. Okla.) (Docket No. 180); *McClintock v. Continuum Producer Services, L.L.C.*, No. 6:17-cv-00259-JAG (E.D. Okla.) (Docket No. 61); *McClintock v. Enterprise Crude Oil LLC*, No. CIV-16-136-KEW (E.D. Okla.) (Docket No. 120); *Chieftain Royalty Co. v. XTO Energy, Inc.*, No. 11-cv-29-KEW (E.D. Okla.) (Docket No. 231); *Reirdon v. Cimarex Energy Co. & Cimarex Energy Co. of Colorado*, No. 6:16-cv-00445-SPS (E.D. Okla.) (Docket No. 132); *Reirdon v. XTO Energy, Inc.*, No. 16-cv-87-KEW (E.D. Okla.) (Docket No. 124); *Reirdon v. Cimarex Energy Co.*, No. 6:16-cv-113-KEW (E.D. Okla.) (Docket No. 105); *Chieftain Royalty Co. v. Newfield Exploration Mid-Continent Inc.*, No. 6:17-cv-00336-KEW (E.D. Okla.) (Docket No. 57); *Chieftain Royalty Co. v. Marathon Oil Co.*, No. 17-334-SPS (E.D. Okla.) (Docket No. 82); and *Donald D. Miller Revocable Family Trust v. DCP Operating Company, LP, et al.*, No. CIV-18-0199-JH (E.D. Okla.) (Docket No. 81). These rates also align with the rates approved by the Honorable Lee R. West of the U.S. District Court for the Western District of Oklahoma in a complex shareholder derivative action, *In re Sandridge Energy, Inc. S'holder Derivative Litig.*, No. CIV-13-102-W, 2015 U.S. Dist. LEXIS 180740 (W.D. Okla. Dec. 22, 2015). In that decision, Judge West relied upon attorney declarations like the ones submitted by Class Counsel here to assess the time and labor expended by the lead counsel in the action. *See id.* at \*10-11 & n.10 (citing counsel's declarations for amount of time expended in litigation). And, those declarations (Dkt. Nos. 328 & 328-2 through 328-4) demonstrate that the lodestar submitted in the *Sandridge* matter was comprised of hourly rates billed several years ago for partners in national complex litigation firms, like Class Counsel here,

that ranged from \$850 per hour (Whitten Burrage (Dkt. No. 328-2)) to \$940 per hour (Kaplan Fox (Dkt. No. 328-3)) to \$1,150 per hour (Jackson Walker (Dkt. No. 328-4)).

91. These rates are also in line with those recently approved by the Oklahoma Supreme Court. *See Strack*, 507 P.3d 609, 617, n.10 (noting Class Representatives' evidence that senior attorneys in complex oil and gas class actions in Oklahoma charge hourly rates ranging from \$550 to \$900 per hour and finding that the \$875 per hour rate approved by the trial court had a rational basis in the evidence presented).

92. Numerous data sources can be evaluated to compare the rates submitted by Class Counsel to those regularly charged for comparable representation in the national complex litigation legal community.

93. Public filings in sophisticated federal bankruptcy litigation—an area of law in which many national complex litigation firms practice—often reveal the hourly rates that such firms charge for representation by their partners in complex bankruptcy matters, *where there is no risk of nonpayment of fees*. In prior work, I have found that the standard hourly rates disclosed for partners from prominent complex litigation firms on the defense-side in high-stakes matters in one bankruptcy court between 2010 and 2012 exceed the rates submitted by Class Counsel here, *even though these cases are more than a decade old*:

<b>Bankruptcy Fees Awarded to Complex Litigation Firms in the SDNY (2010-2012)</b>			
<b>Case Name</b>	<b>Firm</b>	<b>Citation</b>	<b>Partner Rates</b>
<i>In re Houghton Mifflin Harcourt Publishing Company, et al., Debtors</i> , No. 12-12171 (REG)	Paul, Weiss, Rifkind, Wharton & Garrison LLP	(Bkrcty. S.D.N.Y.) (May 2012) (Dkt. No. 55)	\$895 - \$1,120
<i>In re Lightsquared, Inc., et al., Debtors</i> , No. 12-12080 (SCC)	Milbank, Tweed, Hadley & McClory LLP	(Bkrcty. S.D.N.Y.) (July 2012) (Dkt. No. 206)	\$950 – \$1,140

<i>In re Eastman Kodak Company, et al., Debtors</i> , No. 12-10202 (ALG)	Milbank, Tweed, Hadley & McCloy LLP	(Bkrcty. S.D.N.Y.) (June 2012) (Dkt. No. 1492)	\$825 – \$1,140
<i>In re 785 Partners LLC, Debtor</i> , No. 11-13702 (SMB)	Proskauer Rose LLP	(Bkrcty. S.D.N.Y.) (May 2012) (Dkt. No. 189)	\$779 - \$1,050
<i>In re Dynergy Holdings, LLC, et al., Debtors</i> , No. 11-38111 (CGM)	Sidley Austin LLP	(Bkrcty. S.D.N.Y.) (Apr. 2012) (Dkt. No. 578)	\$625- \$1,050
<i>In re Ambac Financial Group, Inc., Debtor</i> , No. 10-15973 (SCC)	Wachtell, Lipton, Rosen & Katz	(Bkrcty. S.D.N.Y.) (Nov. 2011) (Dkt. No. 701)	\$975
<i>In re The Great Atlantic &amp; Pacific Tea Company, Inc., et al., Debtors</i> , No. 10-24549 (RDD)	Kirkland & Ellis LLP	(Bkrcty. S.D.N.Y.) (May 2011) (Dkt. No. 1566)	\$580 - \$995
<i>In re CIT Group Inc. and CIT Group Funding Co. of Delaware LLC, Debtors</i> , No. 09-16565 (ALG)	Sullivan & Cromwell, LLP	(Bkrcty. S.D.N.Y.) (Jan. 2010) (Dkt. No. 229)	\$850 - \$965

94. Survey data demonstrate a similar pattern:<sup>4</sup>

<b>Bankruptcy Fee Survey Data (2009)</b>		
<b>Firm</b>	<b>Median Partner Rate</b>	<b>Number of Partners Filing Billing Entries</b>
Simpson Thacher	\$980	30
Cleary Gottlieb	\$960	47
Shearman & Sterling	\$950	17
Davis Polk	\$948	14
Skadden Arps	\$945	38
Paul Weiss	\$925	24
Cadwalader	\$900	29
Milbank	\$900	55
Weil Gotshal	\$843	142
Gibson Dunn	\$840	29
Latham & Watkins	\$830	57
White & Case	\$825	21
Paul Hastings	\$810	46

Again, these data are from 2009, more than a decade ago; fees have risen substantially since then.

<sup>4</sup> See Amy Kolz, *Bankruptcy Rates Top \$1,000 Mark In 2008-09*, THE AM. LAW DAILY (Dec. 16, 2009), available at <https://www.law.com/americanlawyer/almID/1202436371636/>.

95. I am informed by counsel that additional data with respect to bankruptcy filings specifically involving energy companies with a place of business in Oklahoma demonstrate a similar pattern of hourly rates and supports the rates requested by Class Counsel here:

<b>Bankruptcy Fee Data Specifically Involving Energy Companies With a Place of Business in Oklahoma</b>		
<b>Case Name</b>	<b>Firm</b>	<b>Partner Rates Ranges</b>
Seventy Seven Energy, Inc.	Baker Botts	\$800 - \$1,300
Samson Resources Corporation	Kirkland Ellis	\$665 - \$1,375
Parallel Energy LP	Thompson Knight	\$515 - \$945
New Gulf Resources, LLC	Baker Botts	\$800 - \$1,300
Chaparral Energy, Inc.	Latham & Watkins	\$925 - \$1,350
Sandridge Energy, Inc.	Kirkland Ellis	\$875 - \$1,445
Sandridge Energy, Inc.	Akin Gump	\$800 - \$1,425
Midstates Petroleum Company, Inc.	Kirkland Ellis	\$875 - \$1,445
Midstates Petroleum Company, Inc.	Squire Patton Boggs	\$805 - \$1,150
Postrock Energy Corporation	Lowenstein, Sandler	\$550 - \$1,100
GMX Resources	Andrews Kurth	\$475 - \$1,090

96. Comparable billing rates for national complex litigation firms on the plaintiffs' side can be gleaned from a review of prior class action settlements in complex matters. 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 my previous empirical studies on class action settlements and attorney fees found the most class actions were filed. Although these data are not all-inclusive, based on my experience and scholarly research, I believe they reflect a reasonable cross-section of market rates for qualified plaintiffs' counsel in complex class actions nationwide during the relevant time period. Again, I should add that attorney billing rates have increased substantially since 2008-2012, and that the rates recorded in the following chart significantly understate market rates charged today.

<b>National Class Action Plaintiff Firms' Billing Rates</b>			
<b>Case Name/Number</b>	<b>Plaintiff Firm</b>	<b>Citation</b>	<b>Partners' Fee Range</b>

<i>In re MGM Mirage Sec. Litig.</i> , No. 2:09-cv-01558-GMN-VCF	NP, 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)	NP 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 &amp; 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 &amp; 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 MBIA, 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 &amp; 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 &amp; 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 &amp; 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 &amp; 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 &amp; Co. Inc., Securities, Derivatives and ERISA Litig.</i> , No. 07-cv-09633 (LBS) (AJP) (DFE)	Murray, Frank Sailer LLP	(S.D.N.Y.) (Jun. 2009) (Dkt. No. 246-8)	\$675 - \$750
<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

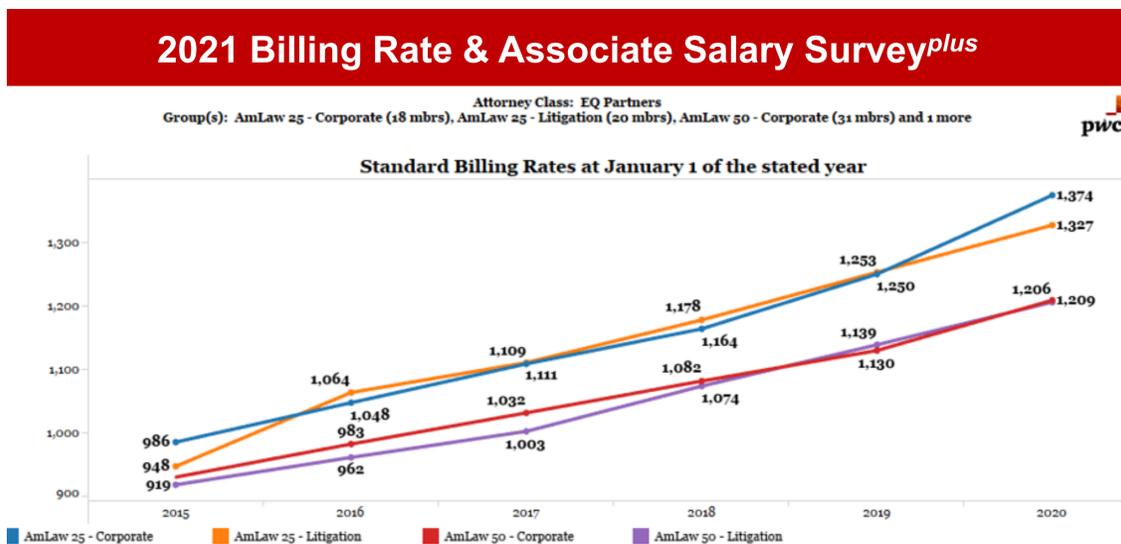
97. A more recent dataset was collected by the *National Law Journal* as a result of a survey of billing rates for 2014. *See* ALM Legal Intelligence, 2014 NLJ Billing Report (2014). This 2014 survey reported national average partner rates that ranged from \$345 to \$1,055 per hour and average associate rates that ranged from \$135 to \$678 per hour. *See id.*

98. The reasonableness of Class Counsel’s rates is further demonstrated by the fact that “59% of corporate counsel at large companies now pay at least one law firm \$1,000 per hour” and many corporations pay hourly rates of up to \$2,000 per hour. *See* Aebra Coe, LAW360.COM, *What Do the Highest-Paid Lawyers Make an Hour?* (May 11, 2016). Moreover, other courts have approved Class Counsel’s rates of \$850/hour and higher. *See, e.g., In re MGM Mirage Sec. Litig.*, No. 2:09-cv-01558-GMN-VCF (D. Nev. Mar. 1, 2016) (Order Awarding Attorneys’ Fees and Expenses (Dkt. No. 396)), *affirmed by* No. 16-15534 (9th Cir. Sept. 15, 2017) (unpublished).

99. A survey by the consulting and accounting firm PwC provides more recent data on hourly rates of elite defense-side firms in large-scale litigation from 2015 to 2020.<sup>5</sup> Given the size of the Judgment here (more than \$100 million), the present case is the sort of matter on which lawyers in these firms often work:

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<sup>5</sup> PwC, Billing Rate and Associate Salary Survey 2021.



As shown in this chart, standard billing rates for partners in these firms exceeded \$1,200/hour in 2020. The significant increase in billing rates between 2015 and 2020 substantiates the inference drawn above that billing rates from earlier surveys and cases substantially understate current market rates.

100. Class Counsel's experience and reputation provide further support for their hourly rates. Class Counsel is comprised of firms with years of experience litigating royalty underpayment class actions in Oklahoma state and federal courts. The information set forth below is drawn from my communications with counsel and from review of the declarations being submitted by each firm.

101. NP is highly experienced in class action, commercial, qui tam, mass tort, securities, and other complex litigation and has successfully prosecuted and settled numerous class actions, including oil and gas royalty underpayment class actions. Additionally, NP has taken on some of the world's largest corporations in contingent fee litigation, including the tobacco industry, the pharmaceutical industry, the energy industry, and the defense contracting industry. In my opinion, Class Counsel consists of some of the most experienced complex litigation attorneys in the country. I have worked with NP for well over a decade on many different cases, tackling a variety

of novel and complex factual and legal issues in courts across the country. Utilizing tremendous creativity and zealous advocacy, these attorneys have achieved huge results for their clients. A few examples of NP's successes include: the *Oklahoma Opioid Litigation* (over \$ 1 billion recovered); *Brocade Securities Litigation* (\$160.1 million settlement in the first major securities fraud case regarding "stock options" backdating); *Delphi Securities Litigation* (\$284.1 million settlement in one of the largest securities fraud settlements funded by a debtor outside of insurance, plus a \$38.25 million settlement with Delphi's former auditor, Deloitte & Touche); *MoneyGram Securities Litigation* (\$80 million settlement, one of the top settlements in all "subprime" cases); *CompSource et al. v. BNY Mellon, N.A. et al.* (\$280 million settlement in securities lending breach of contract/fiduciary duty litigation); *The Chickasaw Nation and The Choctaw Nation v. United States Dept. of Interior, et al.* (\$186 million settlement in historic litigation involving allegations that the federal government mismanaged over 1.3 million acres of the timber lands belonging to the Chickasaw and Choctaw Nations); *In re MGM Mirage Securities Litigation* (\$75 million settlement in largest securities class action recovery in the history of the District of Nevada). I led these cases in front of some of the most experienced and respected complex litigation judges in the country, such as Judge Charles Breyer (*Brocade*) and Judge Shira Scheindlin (*AFTRA*). See generally NP Decl.

102. The law firm of Ryan Whaley Coldiron Jantzen Peters & Webber PLLC ("Ryan Whaley") is a litigation, energy, and environmental law firm based in Oklahoma City with national, regional, and state clients. Ryan Whaley has litigated class actions and complex commercial litigations in courts across the country. With more than 48 years of experience in Oklahoma state and federal courts, Pat Ryan is best known for successful high-profile cases including his work as U.S. Attorney in the prosecution and conviction of Oklahoma City bombing

defendants Timothy McVeigh and Terry Nichols in Denver, Colorado, and securing the acquittal of a founder/CEO in one of the largest corporate fraud cases prosecuted by the U.S. Department of Justice. *See generally* RW Decl.

103. The law firm of Barnes & Lewis has been lead counsel in at least fourteen Oklahoma oil and gas class action cases that have been concluded and resulted in combined Common Funds exceeding \$700 million. Barnes & Lewis holds the distinction of having been lead counsel in the first oil and gas class action nationwide to have been successfully tried to a jury. That jury verdict was upheld on appeal and resulted in a total Common Fund of approximately \$110 million. *See Bridenstine v. Kaiser Francis*, Case No. 97, 117 (unpublished) August 22, 2003, *cert. denied*, June 26, 2006, Okla. Sup. Ct., Case No. DF-01569. *See generally* BL Decl.

104. The law firm Whitten Burrage is one of the most accomplished trial law firms in Oklahoma. Its founders—Reggie Whitten and Judge Michael Burrage—have 80 years of combined trial experience, having successfully tried hundreds of jury trials. With an extensive background in complex litigation, Whitten Burrage is engaged in several of the largest and most significant ongoing lawsuits in the United States. In the case of *Burgess v. Farmers Insurance*, firm founders Reggie Whitten and Michael Burrage tried a two-week jury trial in Lawton, Oklahoma that resulted in the largest jury verdict in Oklahoma history—\$130,000,000. Michael Burrage was the first Native American federal judge when he was appointed to the Eastern District of Oklahoma in 1994, and in 1996, he was sworn in as chief judge. Both Mr. Whitten and Judge Burrage were inducted into the Oklahoma Hall of Fame, the University of Oklahoma College of Law Hall of Fame, and the prestigious American College of Trial Lawyers. *See generally* WB Decl.

105. Moreover, Plaintiff's Counsel, Mr. Lawrence Murphy, has litigated class actions and complex commercial litigation in the Eastern District of Oklahoma, the Northern District of Oklahoma, the Western District of Oklahoma, Oklahoma state courts, and numerous federal and state courts across the country. Mr. Murphy has also served as "National Supervising Counsel for Bad Faith and Coverage Litigation" for AM Best Top 50 Insurance Companies for more than five years. *See generally* Murphy Decl.

106. This action clearly required Class Counsel's considerable skill and experience in oil and gas and complex class action litigation to bring it to such a successful conclusion. The case required investigation and mastery of complex and highly technical issues regarding royalty payment practices and policies in Oklahoma. Class Counsel's skill, knowledge and experience significantly contributed to the remarkable Judgment attained in this Litigation and therefore, is another factor supporting Class Counsel's hourly rates.

107. In summary, based on my experience and review of ample data related to the hourly rates charged by comparable, national complex litigation firms, including the data set forth above, I conclude that the hourly rates submitted by Class Counsel in this action are reasonable and consistent with the customary rates charged by comparable firms in complex matters.

108. Because I find that the reported hours and reported hourly rates are reasonable, I conclude that Class Counsel's lodestar is equal to approximately \$9,379,078.00.

109. The final step is to evaluate the "multiplier" implied by Class Counsel's fee request. The multiplier is the proposed fee divided by the lodestar. *See Newberg and Rubenstein on Class Actions* § 15:87 (6th ed.). Based on counsel's request for 40% of the amount recovered, the implied lodestar multiplier is 6.6.

110. Having ascertained the multiplier, the court “must then assess whether that multiplier is reasonable in the context of the particular case.” *Id.* I turn to that question now.

111. There is no question that this Court has discretion to enhance Class Counsel’s fee award over the base lodestar amount. Such adjustments are frequently applied in both federal and state class action cases that generate common funds for the class. The Oklahoma Supreme Court reaffirmed the permissibility of such adjustments in *Strack*, 507 F.3d 609, 619.

112. Multipliers comparable to that requested in this case are observed in common-fund cases. *See* 1 Conte, *Attorney Fee Awards* § 2:6 (3d ed. June 2022 Update) § 2:6 (“some courts reach a reasonable fee determination based on large multiples of five or 10 times the lodestar. . . . multiples ranging from two to four are becoming standard in common-fund cases when the lodestar method is employed.”) 4 Conte & Newberg, *Newberg on Class Actions* § 13:80 at 494, 497-98 (4th ed. 2002) (“Some courts will award fees pursuant to the percentage method even when the percentage fee exceeds the lodestar fee by three times or more.”).

113. The multiplier implied by Class Counsel’s fee request is also within the range of multipliers that have been approved by Oklahoma courts in oil-and-gas class actions. *See Fitzgerald Farms*, 2015 WL 5794008, at \*8 (“In a large common fund case such as this one, *the lodestar multiplier in Oklahoma ranges from 5.25 to 8.7*”) (emphasis added).

114. In *Strack*, the Oklahoma Supreme Court disapproved the percentage requested, as well as the lodestar multiplier, largely because the trial court had engaged in “conclusory” findings based on a “cursory” review of the evidence. 507 P.3d at 618-19. In the present case, this Court has before it a sufficient record to conduct an independent, searching inquiry under either the percentage or lodestar approach. Every case is different and trial courts have broad discretion to

arrive at a fee they deem to be reasonable in each case as long as (in Oklahoma) that decision is based on evidence and an analysis of each of the 13 mandatory factors.

115. As noted above, in my opinion, the percentage fee requested in this case is reasonable based upon all 13 factors. When a trial court chooses to use the percentage method and finds that the percentage fee is reasonable, then the fee can be appropriate even if the implied lodestar multiplier is higher than the norm in similar cases.

116. Significantly, the Court in *Strack* approved the analysis of fee awards in other class action cases, including cases in federal court, as a benchmark for reasonable fees in Oklahoma. 507 P.3d at 617. A lodestar multiplier that would be out of line with awards in a small case can be within the expected range in a large case. That is especially true here given the result obtained, and the labor involved in achieving it.

117. Extensive empirical research on fee awards in class action cases finds a strong correlation between class recoveries and lodestar multipliers: as class recoveries get larger, so do multipliers. For example, my *New York University Law Review* study of fee awards in 458 state and federal class action settlements between 2009 and 2013 (with Roy Germano and Theodore Eisenberg) found that for cases with recoveries over \$67.5 million, the mean lodestar multiplier was 2.72 with a standard deviation of 3.59.<sup>6</sup>

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<sup>6</sup> Theodore Eisenberg, Geoffrey Miller and Roy Germano, Attorneys' Fees in Class Actions: 2009-2013, 92 N.Y.U. L. Rev. 937 (2017).

TABLE 13. MEAN, MEDIAN, AND STANDARD DEVIATION OF  
MULTIPLIER, CONTROLLING FOR CLASS RECOVERY  
AMOUNT,  
2009–2013

<i>Range of Class Recovery Amount (Millions)</i>	<i>Mean</i>	<i>Median</i>	<i>SD</i>	<i>N</i>
Recovery <=0.4	0.85	0.67	0.52	33
Recovery > 0.4 <= 0.75	0.72	0.74	0.32	25
Recovery > 0.75 <= 1.4	1.49	1.42	0.93	20
Recovery > 1.4 <= 2.65	1.26	1.15	0.79	29
Recovery > 2.65 <= 3.9	1.28	1.2	0.75	26
Recovery > 3.9 <= 6.5	1.37	1.03	1.28	29
Recovery > 6.5 <=12	1.48	1.09	0.98	34
Recovery > 12 <= 23.4	1.86	1.35	1.58	29
Recovery > 23.4 <= 67.5	1.65	1.5	1.27	32
Recovery > 67.5	2.72	1.5	3.59	35

118. Assuming a normal distribution, this study implies that about 16% of these cases – roughly one out of six – will have lodestar multipliers of 6.31 or above, and about 2.5% of the cases – roughly one out of forty – will have lodestar multipliers of 9.9 or above.

119. Similar inferences follow from my earlier study with Professor Eisenberg covering reported earlier class action settlements.<sup>7</sup> That research found that the mean lodestar multiplier for cases between 1993 and 2008 with recoveries between \$69.6 and \$175.5 million was 2.70 with a standard deviation of 2.43.

<sup>7</sup> Theodore Eisenberg and Geoffrey Miller, Attorney Fees and Expenses in Class Action Settlements: 1993–2008, 7 *Journal of Empirical Legal Studies* 248, 274 Table 15 (2010).

Table 15: Mean, Median, and Standard Deviation of Multiplier, Controlling for Class Recovery Amount, 1993–2008

<i>Range of Class Recovery (Millions) Decile</i>	<i>Mean</i>	<i>Median</i>	<i>SD</i>	<i>N</i>
Recovery <= 1.1	0.88	0.74	0.45	33
Recovery > 1.1 <= 2.8	0.95	0.77	0.67	40
Recovery > 2.8 <= 5.3	1.44	1.25	0.74	32
Recovery > 5.3 <= 8.7	1.59	1.25	1.32	34
Recovery > 8.7 <= 14.3	1.49	1.45	0.87	37
Recovery > 14.3 <= 22.8	1.68	1.51	0.85	38
Recovery > 22.8 <= 38.3	1.83	1.44	1.44	33
Recovery > 38.3 <= 69.6	1.98	1.75	1.00	38
Recovery > 69.6 <= 175.5	2.70	2.09	2.43	43
Recovery > 175.5	3.18	2.60	1.99	40

SOURCES: Westlaw, LexisNexis, PACER.

120. Assuming normal distribution of the data, this study implies that about 16% of these cases will have multipliers of 5.13 or above, and 2.5% of these cases will have lodestar multipliers of 7.56 or above.

121. In my opinion, this is one of those unusual cases in which an above-average lodestar multiplier is warranted. My reasons are set forth above in my analysis of the percentage fee: first, the extraordinary intensity of litigation and associated elevated risk, involving a full-scale trial on the merits, appeals and petitions all the way to the United States Supreme Court, attempts to attack the judgment, and the need to initiate garnishment proceedings; and, second, the exceptional result obtained, including a remarkable award of punitive damages and a recovery for the class that *exceeded the total damages even net of counsel fees and other deductions*.

122. In *Miller v. DCP*, cited above, Judge Heaton approved a fee award with a lodestar multiplier greater than the 3.17 rejected in *Strack*. 2021 U.S. Dist. LEXIS 245982, \*19. Judge Heaton held that “[w]hile that rate and amount result in a ‘multiple’ of the lodestar that is greater than what the Oklahoma Supreme Court rejected in *Strack*, the court concludes it is warranted here

in light of the 93% recovery achieved for the Settlement Class.” *Id.*<sup>8</sup> If a 93% recovery warrants a lodestar multiplier greater than the multiplier disapproved in *Strack*, a nearly 200% recovery warrants a higher multiplier still.

123. Accordingly, given the facts and circumstances and the extraordinary recovery achieved for the class, it is my opinion that, should the Court perform a discretionary lodestar cross-check, this analysis confirms the reasonableness of Class Counsel’s fee request.

#### **Case Contribution Award**

124. Class Representative requests the Court approve a Case Contribution Award of up to \$500,000.00 from the Judgment Common Fund as compensation for the substantial time and resources he devoted to this Litigation.

125. Oklahoma law authorizes case contribution awards, including in royalty underpayment class actions such as this. *Strack, supra*, 507 P.3d at 620. Such awards in Oklahoma royalty owner class actions have typically run between 1-2% of the settlement amount. *See, e.g., Fitzgerald Farms, LLC v. Chesapeake Operating, L.L.C.*, No. CJ-2010-38, 2015 WL 5794008, at \*9 (Okla. Dist. Ct. Beaver Cty. July 2, 2015) (“The incentive award sought is consistent with such awards in other cases. Oklahoma courts have typically awarded class representatives in royalty owner class actions approximately 1-2% of the settlement. . . [collecting cases] . . .”); *Velma-Alma Indep. Sch. Dist. No. 15, v. Texaco, Inc.* No. CJ-2002-304 (Okla. Dist. Ct. Stephens Cty. Dec. 22, 2005) (awarding 1-2% of total settlement amounts); *Robertson v. Sanguine, Ltd.*, No. CJ-02-150 (Okla. Dist. Ct. Caddo Cty. July 11, 2003) (awarding 1% class representative fee); *Continental Resources, Inc. v. Conoco, Inc.*, No. CJ-95-739 (Okla. Dist. Ct. Garfield Cty. Aug. 22, 2005)

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<sup>8</sup> Judge Heaton also observed that *Strack* “does not indicate what relative results were obtained by the plaintiff and class counsel in that case, but the court assumes it was significantly less than 93% of what was sought.” *Id.* at \*19, n.2.

“Court awards to Class Representatives of 1% of the common fund are typical in these types of actions, with some awards approaching 5% of the common fund.”); *Cecil v. Ward Petroleum Corp.*, CJ-2010-462 (Okla. Dist. Ct. Grady Cty.) (Judge Hill awarding 1% case contribution award); *Drummond v. Range Res.*, CJ-2010-510 (Okla. Dist. Ct. Grady Cty.) (Judge Van Dyck awarding 1% case contribution award).

126. In addition to these state cases, there is ample precedent under Oklahoma federal law for granting incentive awards to compensate named plaintiffs for their time and effort invested in the case. *See, e.g., Chieftain Royalty Co. v. QEP Energy Co.*, Case No. 11-CV-212-R, Dkt. No. 182 at ¶25 (W.D. Okla. May 31, 2013) (\$775,000 case contribution award in \$155,000,000 common-fund case); *Cecil v. BP Am. Prod. Co.*, Case No. 16-CV-410-KEW, Dkt. No. 260 at ¶38 (E.D. Okla. Nov. 19, 2018) (\$450,000 case contribution award in \$147,000,000 common-fund case); *Hay Creek Royalties, LLC v. Roan Resources LLC*, Case No. 19-CV-177-CVE, Dkt. No. 74 at ¶2(a) (N.D. Okla. April 28, 2021) (\$300,000 case contribution award in \$20,200,000 common-fund case); *see also* Class Counsel’s Motion for Approval of Attorney’s Fees at Ex. 1-B (chart summarizing Oklahoma oil-and-gas class action fee and incentive awards from 1998-2018, including multiple awards in excess of \$700k).

127. The Court in *Strack* emphasized that such awards should be “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.” 507 P.3d at 620. The analysis thus involves two steps not unlike the inquiry into reasonable fees under the lodestar method: (a) an analysis of the representative plaintiff’s hours and hourly rates (measured by the opportunity costs of the representative plaintiff’s time), and (b) consideration of other factors, comparable to the lodestar multiplier, that may warrant an adjustment to the base lodestar figure.

128. Mr. Cline devoted a significant amount of time and attention to this matter – much more than is typical for class representatives. He worked with Class Counsel since the inception of this Litigation, reviewed pleadings, motions, briefs, and other court filings, communicated regularly with Class Counsel, responded to document requests and interrogatories, searched for and produced documents, gave multiple depositions, participated in the mediation, and attended the trial. *See* Cline Declaration at ¶31. Overall, Mr. Cline has devoted approximately 800 hours to this case to date, and he estimates spending at least another 30-50 hours working on this case in the future. *Id.*

129. Mr. Cline does not have a single hourly rate for his time. He performs a variety of jobs for which he earns hourly rates ranging from \$125/hour to over \$500/hour. *Id.* In my opinion, a reasonable rate for Mr. Cline’s services in this case is the average of these two, or approximately \$318/hour.

130. Using these numbers, I estimate Mr. Cline’s lodestar through the completion of this litigation to be approximately \$270,300.00 (850 hours times \$318/hour).

131. The next stage of analysis involves consideration of the “other factors” that may warrant an adjustment to this lodestar amount. In reviewing the factors under §2023(G)(4)(e) in the context of an incentive award, it is my opinion that two principal factors justify an enhancement: first, the risk Mr. Cline took on in representing the class, and second, his contribution to an extraordinarily successful outcome.

132. As noted above, this case posed risks for a number of reasons, not least of which was the extraordinary efforts that Defendant made to fight every step of the way, even to the point of becoming recalcitrant about paying the judgment. Moreover, unlike many class actions, in which the representative plaintiff expends no more than a few dozen hours, and therefore risks

little in terms of their overall activity, Mr. Cline devoted more than 800 hours of time, or approximately twenty weeks of full-time work, that he could have spent on matters that compensated him without risk of non-success.

133. If class members such as Mr. Cline received only their lodestar amount at the end of the day, they would have little incentive to offer their services, given that they receive nothing if the case fails. Thus, in my opinion, the risk Mr. Cline incurred warrants an upward adjustment to his lodestar amount.

134. Mr. Cline's outstanding contribution to the case also warrants such an adjustment. Based on my review of the Declarations of Mr. Cline and Mr. Beckworth, it is clear to me that the excellent recovery attained in this case would not have been achieved but for Mr. Cline's willingness to file this lawsuit and to contribute his time and resources throughout the case.

135. I note, further, that Mr. Cline has displayed a dedication to the class, even at potential risk to his own interests. Mr. Cline rejected Defendants' attempts to pick him off as a class representative by tendering him a settlement of his claim prior to trial. *See* Cline Decl. at ¶¶11-12.

136. Moreover, based on my review of the materials and Mr. Cline's Declaration, there is no evidence of collusion, conflict of interest, or any promises of recovery by Class Counsel. *See* Cline Decl. at ¶35.

137. Based on the foregoing, it is my opinion that a substantial upward adjustment is warranted in this case. In my opinion, a Case Contribution Award to Class Representative of up to \$500,000.00, in an amount to be determined by this Court, is reasonable under the circumstances.

**Litigation Expenses**

138. Class Counsel seeks reimbursement of Litigation Expenses not to exceed \$850,000.00, in an amount to be determined by the Court, incurred in the prosecution of this case on behalf of Class Representative and the Certified Class. District Courts in the Tenth Circuit allow reimbursement of expenses and costs incurred in litigating a class action. To date, Class Counsel has advanced \$719,430.29 to prosecute this Action on behalf of Class Representative and the Certified Class with the risk of non-recovery and non-repayment, and will incur additional expenses in the future. Successfully prosecuting large class actions like this often requires the expenditure of millions of dollars. This is especially true in litigation against prominent and well-funded corporate defendants. Based on my discussions with Class Counsel regarding the litigation and the expenses incurred, and my review of counsel's list of expenses, it is my opinion that these expenses were reasonable and necessary to achieve this outstanding Judgment.

**Administration, Notice, and Distribution Costs**

139. In the Notice, Class Counsel also stated they would request approval of Administration, Notice, and Distribution Costs associated with effectuating the Settlement in an amount not to exceed \$650,000.00 to be paid from the Judgment Common Fund. As of December 31, 2022, the Judgment Administrator, JND, has incurred \$140,480.28 administration fees and costs, which includes mailing the Notice of Pendency and the Notice to Class Members; processing opt-out requests submitted in response to the Notice of Pendency; establishing and maintaining a dedicated website and toll-free number; establishing the Judgment Fund Account; and responding to Class Member correspondence. *See* Declaration of Jennifer M. Keough on Behalf of Judgment Administrator, JND Legal Administration LLC ("JND Decl.") at ¶14. JND will incur additional costs in the future for its continuing efforts to reach and communicate with Class members and to distribute the Judgment Common Fund to them. *Id.* Further, Class Counsel reasonably anticipate

that the experts working on Administration, Notice and Distribution will continue to incur expenses in carrying out their duties, up to the amount stated in the Notice. *See* NP Decl. at ¶92. In my opinion, these costs are reasonable and necessary for purposes of administering the Judgment Common Fund and should be approved.

**The Form and Manner of Distribution of the Notice of Motion For Attorney Fees From Judgment Fund Pursuant to Rule 23(h) is Adequate**

140. Class Counsel expended significant time and resources to effectuate distribution of the Notice of Motion For Attorney’s Fees From Judgment Fund Pursuant to Rule 23(h) to the Certified Class. On January 13, 2023, JND Legal Administration, the court-appointed Judgment Administrator, distributed the Postcard Notice via USPS first-class mail to 67,643 records. *See* JND Decl. at ¶5. In addition, the Judgment Administrator caused the Summary Notice to be published on January 19, 2023, in *The Oklahoman*, *Tulsa World*, *The Ardmoreite*, *Fairview Republican*, *Hughes County Tribune*, and *McAlester News-Capital*. *Id.* at ¶8. The Judgment Administrator also maintains a website dedicated to this Litigation—[www.cline-sunoco.com](http://www.cline-sunoco.com)—which contains various documents relevant to the Litigation and the Judgment. *Id.* at ¶9. And, the Judgment Administrator maintains a toll-free number to answer questions from class members. *Id.*

141. Federal Rule of Civil Procedure 23(h)(1) requires that a court considering a motion for reasonable attorney fees and nontaxable costs in a certified class action direct notice to class members “in a reasonable manner.” FED. R. CIV. P. 23(h)(1). Other than requiring that the notice be made “in a reasonable manner,” Rule 23 does not dictate any specific content that the notice must contain. *See* 3 Newberg and Rubenstein on Class Actions § 8.25 (6th ed.). According to *Newberg*, a fee notice should inform class members of three things:

- that their counsel will seek fees and the general level at which the fee will be sought;

- the date on which the full fee petition will be filed and how class members can gain access to it at that time; and
- the precise deadline by which they must file objections and the required structure of those objections.

*Id.*

142. Here, the Notice accomplished all three of these things. First, the Notice stated that Class Counsel would seek attorney fees up to 40% of the Judgment Common Fund and that the amount of attorney fees paid from the Judgment Common Fund may be offset by \$4,500,000.00 in stipulated fees paid by Defendants. Second, the Notice stated that Class Counsel would file their full fee petition and other requests by January 31, 2023, and that such filings would be available on the website. Third, the Notice stated that the deadline for class members to file objections was February 14, 2023, and provided instructions on how to file any objection.

143. Based on the foregoing facts, it is my opinion that the Notice provided here was directed to class members in a reasonable manner and is adequate under the circumstances.

### **Conclusion**

144. In conclusion, I am of the opinion that, under the circumstances of this litigation: (a) Attorney Fees of 40% of the Judgment Common Fund, which may be offset by \$4,500,000.00—the stipulated amount of statutory fees Defendants paid pursuant to the PRSA—is reasonable under the circumstances; (b) reimbursement of up to \$850,000.00 in Litigation Expenses incurred in successfully prosecuting this litigation, which may be offset by \$500,000.00—the stipulated amount of statutory costs Defendants paid pursuant to the PRSA—is reasonable under the circumstances; (c) payment of up to \$650,000.00 in Administration, Notice, and Distribution Costs is reasonable under the circumstances; (d) a Case Contribution Award of \$500,000.00 to Class Representative as compensation for his time and effort is reasonable under

the circumstances; and (e) the manner of distribution and form of the Notice of Motion For Attorney's Fees From Judgment Fund Pursuant to Rule 23(h) is reasonable and adequate.

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



Geoffrey P. Miller  
January 31, 2023

# EXHIBIT A

**Exhibit A: Resume**

**GEOFFREY P. MILLER**

New York University Law School  
40 Washington Square South Suite 411G  
New York, New York 10012  
(212) 998-6329 (office)  
(212) 995-4659 (fax)  
geoffrey.miller@nyu.edu

Education

Columbia Law School, J.D. (1978)  
Editor-in-Chief, Columbia Law Review (1977-78)  
Princeton University, A.B. *magna cum laude* (1973)

Work Experience

New York University Law School (1995-present)  
Stuyvesant P. Comfort Professor of Law  
Co-Director, Program in Corporate Compliance and Enforcement (2014-2017)  
Senior Faculty Fellow, Program in Corporate Compliance and Enforcement  
(2017-present)  
Faculty Co-Director, Center on Civil Justice at NYU Law School (2015-present)  
Faculty Director, NYU Center for Financial Institutions (1994-present)  
Co-Director, NYU Center for Law, Economics and Organization (2006-2012)  
Chair, Academic Personnel Committee (1999-2000; 2004-2006)  
Chair, Promotions and Tenure Committee (2007-2009; 2018-2019)

University of Chicago Law School (1983-1995)  
Kirkland & Ellis Professor (1989-1995)  
Editor, Journal of Legal Studies (1989-1995)  
Director, Program in Law and Economics (1994-1995)  
Director, Legal Theory Workshop (1989-1993)  
Associate Dean (1987-1989)  
Professor of Law (1987-1989)  
Assistant Professor of Law (1983-1987)

Distinguished Visiting Professor, Vanderbilt Law School, 2014  
Visiting Professor, University of Frankfurt, Summer 2013  
Faculty Member, Study Center Gerzensee, Switzerland, Spring 2012, Summer 2016  
Visiting Lecturer, University of Genoa Department of Law, 2011

Visiting Lecturer, Collegio Carlo Alberto (Moncalieri, Italy), 2011, 2013  
Visiting Scholar, European University Institute, Florence, Italy, Fall/Winter 2010  
Visiting Chair on Private Actors and Globalisation, Hague Institute for the Internationalisation of Law, Fall/Winter 2010  
Robert B. and Candace J. Haas Visiting Professor of Law, Harvard Law School, Fall 2009  
Max Schmidheiny Guest Professor, University of St. Gallen, Switzerland Summer 2009  
Faculty Member, NYU-NUS in Singapore, 2009, 2011, 2013  
Fresco Endowed Professor of Law, University of Genoa, Italy, Summer 2008, Spring 2009, Summer 2010  
Visiting Scholar, University of Minnesota Law School, Spring 2008  
Visiting Lecturer, University of Bolzano, Italy, Summer 2007  
Commerzbank Visiting Professor, Institute for Law & Finance, University of Frankfurt, Germany, Summer 2004, Summer 2005, Summer 2010  
Visiting Professor, Columbia Law School, Fall 2001  
Visiting Professor, University of Sydney, Australia, Summer 2002; Summer 2006; Spring 2009  
Zaeslin Visiting Professor, University of Basel, Switzerland, Summers 2001-2021  
Visiting Scholar, CentER for Economic Research, Tilburg, Holland, Summer 1996  
John M. Olin Visiting Scholar, Cornell University Law School, Summer 1992, Spring 1996; Winter 1997, Summer 2005, Spring 2008, Spring 2009, Spring 2010  
Visiting Scholar, Bank of Japan, Spring 1995  
Visiting Professor, New York University Law School, Fall 1994  
Consultant, Federal Reserve Bank of Chicago, 1992-1994  
Visiting Scholar, New York University Law School, Fall 1993  
Simpson Grierson Butler White Visiting Professor, University of Auckland, New Zealand, Summer 1993

Associate, Ennis, Friedman, Bersoff & Ewing  
Washington, D.C. (1982-83)

Attorney Adviser, Office of Legal Counsel  
U.S. Department of Justice (1980-82)

Clerk, Hon. Byron R. White  
Supreme Court of the United States (1979-80)

Clerk, Hon. Carl McGowan  
U.S. Court of Appeals, District of Columbia (1978-79)

#### Scholarly and Law Reform Activities

Member, American Law Institute (elected 2015)

American Law Institute, Reporter, Principles of the Law, Compliance, Enforcement, and Risk Management for Corporations, Nonprofits, and Other Organizations (2014-present)

Fellow, American Academy of Arts and Sciences (2011-2020)

Society for Empirical Legal Studies  
Fellow (2014-present),  
Co-Founder and Co-President (2006-2007)  
Board Member (2006-2014)

### Corporate Service

Board member of the Board of Directors, State Farm Bank (2010-2021). Audit Committee Chair (2015-2021)

### Publications

#### Books

The Economics of Securities Law I (editor) (Edward Elgar 2016)

The Economics of Securities Law II (editor) (Edward Elgar 2016)

The Economics of Financial Law I (editor) (Edward Elgar 2016)

The Economics of Financial Law II (editor) (Edward Elgar 2016)

Banking Law and Regulation, Little, Brown & Co. 1992 (with Jonathan R. Macey); Second Edition, Aspen Law & Business 1997 (with Jonathan R. Macey), Third Edition, Aspen Law & Business 2001 (with Jonathan R. Macey and Richard Scott Carnell); Fourth Edition, Aspen Law & Business 2008 (with Richard Scott Carnell and Jonathan R. Macey), under title “The Law of Banking and Financial Institutions); Fifth Edition (with Richard Scott Carnell and Jonathan R. Macey), under title “The Law of Financial Institutions, Wolters Kluwer Law & Business (2013) [translated into Chinese, The Commercial Press, 2016]; Sixth Edition, under title “The Law of Financial Institutions,” Wolters Kluwer Law & Business (2017)

Banking Law and Regulation: Statutory and Case Supplement (Little, Brown & Co. 1992; Second Edition, Aspen Law & Business, 1997) (with Jonathan R. Macey), Third Edition, Aspen Law & Business, 2000) (with Jonathan R. Macey and Richard Scott Carnell); Fourth Edition, Aspen Law & Business 2008 (with Richard Scott Carnell and Jonathan Macey)

Banking Law and Regulation: Teacher’s Manual (1992; Second Edition 1997; Third Edition 2001, Fourth Edition 2008) (with Jonathan R. Macey and Richard Scott Carnell)

The Law of Governance, Risk Management and Compliance (Wolters Kluwer Law and Business 2014); Second Edition 2017.

The Law of Governance, Risk Management and Compliance Teachers Manual (Wolters Kluwer Law and Business, 2014; Second Edition 2017.

The Governance of International Banking (co-authored with Fabrizio Cafaggi, with Tiago Andreotti, Maciej Borowicz, Agnieszka Janczuk, Eugenia Macchiavello and Paolo Saguato) (Edward Elgar 2013)

Ways of a King: Legal and Political Ideas in the Bible (Vandenhoeck & Ruprecht 2011)

Trust, Risk, and Moral Hazard in Financial Markets (Il Mulino 2011)

The Origins of the Necessary and Proper Clause (with Gary Lawson, Robert Natelson, and Guy Seidman) (Cambridge University Press 2010)

The Economics of Ancient Law (editor) (Edward Elgar 2010)

Bank Mergers and Acquisitions (editor, with Yakov Amihud) (Kluwer Academic Publishers 1998)

La Banca Central en América Latina: Aspectos Económicos y Jurídicos [Central Banks in Latin America and Their New Legal Structure] (in Spanish) (editor, with Ernesto Aguirre and Roberto Junguito Bonnet) (Tercer Mundo: Bogotá 1997)

Costly Policies: State Regulation and Antitrust Exemption in Insurance Markets (AEI Press 1993) (with Jonathan R. Macey)

## Articles

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The English vs. the American Rule on Attorneys' Fees: An Empirical Study of Attorney Fee Clauses in Publicly-Held Companies' Contracts, 98 Cornell Law Review 327 (2013) (with Theodore Eisenberg)

The Quasi-Class Action Method of Managing Multi-District Litigations: Problems and a Proposal, 63 Vanderbilt Law Review 107 (2010) (with Charles Silver)

Attorneys' Fees and Expenses in Class Action Settlements: 1993-2008, 7 *Journal of Empirical Legal Studies* 248 (2010) (with Theodore Eisenberg)

A New Look at Judicial Impact: Attorneys' Fees in Securities Class Actions after *Goldberger v. Integrated Resources, Inc.*, 29 *Washington University Journal of Law & Policy* 5-35 (2009) (with Theodore Eisenberg and Michael Perino)

Attorneys' Fees in Class Action Settlements: An Empirical Study, 1 *Journal of Empirical Legal Studies* 27 (2004) (with Theodore Eisenberg)

The Public Interest in Attorneys' Fees Awards for Public Interest Litigation, 47 *Law and Contemporary Problems* 233 (1984) (with Robert V. Percival), reprinted in *University of Chicago Law School Record* (1989)

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Major Lectures

Revelation as a Source of Legal Authority (Keynote Address, Conference on Religious Liberty, Touro Law School 2013)

Trust, Risk, and Moral Hazard in Financial Markets (University of Genoa, Fresco Chair Lectures in Law and Finance, June 2010)

A Simple Theory of Takeover Regulation in the United States and Europe; Intellectual Hazard (Commerzbank Lectures, University of Frankfurt, May 2010)

The European Union's Takeover Directive and Its Implementation in Italy (University of Rome III, 2008)

Catastrophic Financial Failures: Enron, HIH and More (Ross Parsons Lecture, Sydney, Australia, 2002)

Das Kapital: Solvency Regulation of the American Business Enterprise (Coase Lecture, University of Chicago Law School, 1993)

Banking in the Theory of Finance; The Simple Economics of Litigation and Settlement; The Economic Structure of Corporation Law (University of Auckland, New Zealand, 1993)

#### Journal Referee Reports

American Law and Economics Review  
Journal of Legal Studies  
Journal of Law, Economics and Organization  
Review of Law and Economics

#### Conferences Organized

Law and Banking Conference 2019 (Paris), 2018 (New York), 2017 (Bad Homburg, co-sponsored with University of Frankfurt); 2016 (New York); 2015 (Zurich); 2014 (New York); 2013 (Zurich); 2012 (New York); 2011 (Florence)

Achieving and Responsible Enterprise: Principles of Effective Compliance and Enforcement (May 8, 2015)

Global Economic Policy Forum, New York 2013 (keynote speakers included Federal Reserve Bank of New York President William Dudley and former Governor of the Bank of England Baron King of Lothbury); New York 2008 (keynote speaker was Jean-Claude Trichet, Chairman of the European Central Bank); 2007 (keynote speaker was Ben Bernanke, Chairman of the Board of Governors of the Federal Reserve)

The Good Bank Debate (New York 2013) (co-sponsored with Mazars)

Judicial Dialogue on Mass Litigation, Florence Italy, October 15-16, 2010 (co-organizer of conference co-sponsored by NYU Law School, the American Law Institute, and the European University Institute)

Finlawmetrics 2010: Central Banking, Regulation & Supervision after the Financial Crisis (co-sponsor and member of steering committee)

Finlawmetrics 2009: After The Big Bang: Reshaping Central Banking, Regulation and Supervision (Milan, Italy, Spring 2009) (co-sponsor and member of steering committee)

NYU Global Economic Policy Forum 2009: The Future of Regulation and Capital Markets (November 5, 2009) (co-organized with Professor Alan Rechtschaffen and with the NYU Law School Alumni Association)

Third Annual Conference on Empirical Legal Studies (Cornell University, Ithaca, New York, Fall 2008) (co-organizer)

Second Annual Conference on Empirical Legal Studies (New York, New York, November 10-11, 2007). Major conference (425 participants) exploring all aspects of the empirical study of law. Co-organized with Jennifer Arlen, Bernard Black, Theodore Eisenberg and Michael Heise.

First Annual Conference on Empirical Legal Studies (Austin, Texas, October 2006). Major conference exploring all aspects of the empirical study of law. Co-organized with Jennifer Arlen, Bernard Black, Theodore Eisenberg and Michael Heise.

Conference on Legal Aspects of the International Activities of Central Banks, Lima Peru, October 1997. This conference, co-sponsored by the central bank of Peru, brought together leaders in the legal and economic issues facing central banks in the management of their external reserves.

Conference on the Governance of Institutional Investors (New York, New York, February 14, 1997). This conference, sponsored by the NYU Stern School of Business Salomon Center in association with the New York University Law School Center for the Study of Central Banks, brought together top executives, attorneys, scholars and others interested in the management and organization, both economic and legal, of the nation's large institutional investors, including its mutual fund industry.

Conference on Bank Mergers and Acquisitions (New York, New York, October 11, 1996). This conference, sponsored by the NYU Stern School of Business Salomon Center in association with the New York University Law School's Center for the Study of Central Banks, brought together leading academics, lawyers, and investment bankers to discuss some of the broader implications of bank mergers and acquisitions. Co-organizer of this conference was Professor Yakov Amihud of the Stern School's Finance Department.

Conference in Central Banks in Latin America (Bogota, Colombia, February, 1996). This conference, co-sponsored by the central bank of Colombia with technical assistance from the Legal Affairs Department of the International Monetary Fund, brought together leaders of Latin American central banks, the international financial community, and scholars from a variety of

disciplines, to discuss issues related to the independence of central banks and economic development.

Conference on Central Banks in Asia (Shanghai, China, October, 1995). This conference, co-sponsored with KPMG-Peat Marwick, brought together leaders from commercial banks, investment banks, and industrial firms, as well as central bankers, to discuss Asian central banks to address issues such as the proposed law granting a degree of independence to the central bank of China.

Conference on Ancient Law (Berkeley, California, March 1995). This conference, organized with Professors James Lindgren of Chicago-Kent Law School and Laurent Mayali of the University of California at Berkeley Law School, brought together important figures from a variety of disciplines interested in Ancient Law.

Conference on Central Banks in Eastern Europe and the Newly Independent States (Chicago, Illinois, April 1994). This conference brought together the Prime Minister of Estonia, three present or former Ministers of Finance of Eastern European states (including Boris Fyoderov, former Finance Minister of the Russian Republic), the heads of the central banks of eleven nations in Eastern Europe and the Newly Independent States, together with a wide variety of highly-placed officials from these countries and from the west, to discuss issues related to the independence of central banks and economic development.

#### Professional Memberships and Positions

New York State Bar

District of Columbia Bar

American Bar Association

American Law Institute (1988-1996; 2017-present)

Member, Paolo Baffi Centre Scientific Advisory Board, Milan, Italy (2008- 2016)

Member, International Academic Council, University of St. Gallen,  
Switzerland (2004-2016)

Chairman, Section on Business Associations, American Association of Law  
Schools (1995)

Member of the Board of Directors, American Law and Economics Association  
(1995-1998)

Member of the Foreign Advisory Committee, Latin American Law and  
Economics Association (1995-2000)

Member of the Foreign Advisory Board, Universidad Torcuato Di Tella School of Law,  
Buenos Aires, Argentina (1992-1999)

Member of the Editorial Board, Supreme Court Economic Review

Member of the Advisory Board, University of Hong Kong Faculty of Law Asian Institute  
of International Financial Law (2001-present)

#### Courses

Governance, Risk and Compliance (Study Center Gerzensee, Switzerland 2016)  
Law and Business of Bitcoin and Block Chain (2015; 2017; 2019-2022) (with David Yermack)  
Compliance and Risk Management for Attorneys (2014, 2015, 2017)  
Professional Responsibility (1985-93; 1996-98; 2003-2007; 2013; 2019-2022)  
The Crisis of 2008 (2009, 2010)  
Reading Class: Restructuring Finance (2009); Cutting Issues in Finance (2014-2015);  
Reading Class: Law and Politics in Shakespeare (2015-2016; 2019)  
Property (1986-87)  
Corporations (1985-88; 1991-93; 1997-2000; 2005; 2008; 2012; 2014; 2016)  
Seminar on Separation of Powers (1985, 1987)  
Civil Procedure (1983-84; 2004-2005; 2011; 2013; 2016; 2018-2020)  
Federal Regulation of Banking (1983, 1989-93; 1995-97; 2003, 2006-2010; 2012; 2015)  
Law and Business of Banking (2012; with Gerald Rosenfeld)  
Land Development (1984-85)  
Securities Law (1990-91)  
Workshop in Legal Theory (1989-91)  
Seminar on Financial Institutions (1992-93 (with Merton Miller) (1996-97)  
Ethics in Class Action Practice (Continuing Legal Education Seminar 2002-2005)  
Law and Economics (University of Basel, Switzerland 2005, 2007-2014)  
Advanced Seminar on Law and Economics (University of Genoa, Italy 2008)  
Banking and the Financial Crisis (University of Genoa, Italy 2009)  
Trust, Risk, and Moral Hazard in Financial Markets (University of Genoa, Italy, 2010)  
International Banking (University of Sydney, Australia, 2002, 2006)  
Introduction to Banking Law (University of Basel, Switzerland 2001, 2002, 2003, 2004, 2009,  
2010; 2011; 2012; 2013; 2014; 2015; 2016; 2017; 2018)  
Banking in the Theory of Finance (University of Frankfurt, Germany 2004, 2005)  
Banking Regulation in Crisis (University of Frankfurt, Germany, 2010)  
Banking: Law and Economics Issues after the Financial Crisis (Study Center Gerzensee, 2012)

#### Other Activities

Fellow, Society for Empirical Legal Studies (2015-2020)

Member, Board of Directors, American Law and Economics Association (1996-1999)

Member, Board of Advisors, The Independent Review (1996-present)

Member, Board of Advisors, Asian Institute of International Financial Law (2001-present)

Member, Editorial Advisory Board, Supreme Court Economic Review (1995-2001)

Member, Editorial Advisory Board, The Brookings-Wharton Papers on Financial Policy (1997-present)

President, Section on Financial Institutions and Consumer Financial Services, American Association of Law Schools (1999)

President, Section on Business Associations, American Association of Law Schools (1995)

Member, Board of Contributors, American Bar Association Preview of Supreme Court Cases (1985-1993)

Consultant, Administrative Conference of the United States (1988-89; 1991-1992)

Board of Directors and Volunteer Listener, D.C. Hotline (1980-83)

### Awards

1992 Paul M. Bator Award for Excellence in Teaching, Scholarship and Public Service, from the Federalist Society for Law and Public Policy Studies

Podell Distinguished Teaching Award (NYU Law School 2016)

### Languages

Moderate reading knowledge of Spanish, French, and Italian.

### Blog Posts

Whistleblowing in the Wind, Compliance and Enforcement (June 29, 2016)

Banking's Cultural Revolution, Compliance and Enforcement (June 8, 2016)

Breach of Contract ≠ Fraud, Compliance and Enforcement (May 25, 2016)

Judges are not Potted Plants, Compliance and Enforcement (May 18, 2016)

Compliance Goes to School, Compliance and Enforcement (May 12, 2016)

CFPB Issues Proposed Consumer Arbitration Rule, Compliance and Enforcement (May 5, 2016)

FSOC Socked, Compliance and Enforcement (April 28, 2016)

Compliance and Risk Management: Area for Legal Teaching and Scholarship?, Harvard Law School Forum on Corporate Governance and Financial Regulation (May 22, 2014)

### Shorter Works

Defusing The Banks' Financial Time Bomb: Without Tough Reforms, Writes Robert Pozen, We'll Probably Face An Ugly Repeat of Recent History (Business Week, March 11, 2010)

Why Interstate Banking is in the National Interest, Testimony Before the Subcommittee on Financial Institutions Supervision, Regulation and Deposit Insurance of the House Committee on Banking, Housing and Urban Affairs (September 29, 1993)

Challenging the Concept of the Common Law as a Closed System, Columbia Law School Report, Autumn, 1993 (with Norman Silber)

The Insurance Industry's Antitrust Exemption: A Longstanding Tradition Faces its Greatest Challenge, 1992-93 ABA Preview of Supreme Court Cases 198 (1993)

Shootout at the Escheat Corral, 1992-93 ABA Preview of Supreme Court Cases (1993)

Choices and Chances for Consumers, Legal Times, Oct. 12, 1992, at 29-30.

Impeachment Procedures: An Unexplored Territory in the Separation of Powers, 1992-93 ABA Preview of Supreme Court Cases 39 (1992)

An (Ex)changing of the Guard, 21 Journal of Legal Studies iii (1992)

Revisiting the Contingency Factor in Fee-Shifting Awards, 1991-92 ABA Preview of Supreme Court Cases 327 (1992)

The Foreign Sovereign Immunities Act and the Market for Public International Debt, 1991-92 ABA Preview of Supreme Court Cases 307 (1992)

Return of the Tenth Amendment?: Federal Control and State Autonomy over Low Level Radioactive Wastes, 1991-92 ABA Preview of Supreme Court Cases 284 (1992)

What are the Limits on Congressional Power to Influence Pending Cases?, 1991-92 ABA Preview of Supreme Court Cases 158 (1991)

RICO Standing for Securities Fraud: Does the Purchaser-Seller Rule of Rule 10b-5 Apply?, 1991-92 ABA Preview of Supreme Court Cases 155 (1991)

Banking and Investment: Introduction to UPA Index and Microfiche Collection (University Publications of America 1991)

Source of Strength in the Court: Can Bank Holding Companies be Required to Support Failing Subsidiary Banks?, 1991-92 ABA Preview of Supreme Court Cases 42 (1991)

Source of Strength: A Source of Trouble, Legal Times, September 30, 1991 (Special Supplement, pp. 22-25)

The Once and Future American Banking Industry, The American Enterprise (with Jonathan R. Macey)(1991)

The Former Stockholder as Plaintiff in Short-Swing Trading Cases, 1990-91 ABA Preview of Supreme Court Cases (1991)

Disposing of Demand Excuse in Derivative Litigation, 1990-91 ABA Preview of Supreme Court Cases (1991)

Up in the Air: Can Congress Require States to Appoint Members of Congress to State Agencies?, 1990-91 ABA Preview of Supreme Court Cases 294 (1991)

The Statute of Limitations under Rule 10b-5, 1990-91 ABA Preview of Supreme Court Cases (1991)

Tort Claims Against Federal Banking Agencies: New Hope For Shareholders and Officers of Failed Depository Institutions?, 1990-91 ABA Preview of Supreme Court Cases 94 (1991)

Punitive Damages Redux: If the Eighth Amendment Doesn't Apply, What About the Due Process Clause?, 1990-91 ABA Preview of Supreme Court Cases 47 (1990)

Quandaries of Causation: Proxy Solicitation in Freeze-Out Mergers, 1990-91 ABA Preview of Supreme Court Cases 57 (1990)

Racial Statesmanship, Legal Times S31 (July 23, 1990)

Eurodollars, Sovereign Risk, and the Liability of U.S. Banks for Deposits in Foreign Branches, 1989-90 ABA Preview of Supreme Court Cases 281 (1990)

When is a Note a Note?, 1989-90 ABA Preview of Supreme Court Cases 18 (1990)

Interstate Banking and the Commerce Clause, 1989-90 ABA Preview of Supreme Court Cases 168 (1990)

Federal Courts, Municipalities, and the Contempt Power, 1989-90 ABA Preview of Supreme Court Cases 37 (1989)

Shoe Could Still Drop on Issue of Punitive Damages, National Law Journal (August 21, 1989)

Punitive Damages and the Constitution, 1988-89 ABA Preview of Supreme Court Cases 391 (1989)

States, Bankruptcy and the Eleventh Amendment, 1988-89 ABA Preview of Supreme Court Cases 412 (1989)

Stockholders, Arbitration, and the Securities Act of 1933, 1988-89 ABA Preview of Supreme Court Cases 383 (1989)

Appropriations Riders, Nondisclosure Agreements, and the Separation of Powers, 1988-89 ABA Preview of Supreme Court Cases 375 (1989)

Judicial Appointments and the ABA: Business as Usual or Brand New World?, 1988-89 ABA Preview of Supreme Court Cases 379 (1989)

S & L Receiverships, State Law, and the Federal Courts, 1988-89 ABA Preview of Supreme Court Cases 255 (1989)

The Non-delegation Doctrine in Taxation: A Different Constitutional Calculus?, 1988-89 ABA Preview of Supreme Court Cases 261 (1989)

Bankruptcy, Tax Liens, and Post-Petition Interest, 1988-89 ABA Preview of Supreme Court Cases (1989)

Federal Courts, State Taxes: A Vexing Dilemma For the Enforcement of Civil Rights in a Federal System, 1989-90 ABA Preview of Supreme Court Cases 95 (1988)

Separation of Powers and the Sentencing Commission, 1988-89 ABA Preview of Supreme Court Cases 23 (1988)

Administering the Savings and Loan Crisis: New Problems for the FSLIC, 1988-89 ABA Preview of Supreme Court Cases (1988)

Federal Procurement and the Separation of Powers, 1988-89 ABA Preview of Supreme Court Cases 26 (1988)

Thinking About a Career in Law, 1988-89 Talbot's Student Planning Book 32 (1988)

Carl McGowan: A Great Judge Remembered, 56 George Washington Law Review 697 (1988)

Separation of Powers: The Independent Counsel Case Tests the Limits, 1987-88 ABA Preview of Supreme Court Cases 390 (1988)

Decisionmaking in Collegial Bodies, Judicature, April/May 1988

The FDIC, Bank Officers and the Due Process Clause, 1987-88 ABA Preview of Supreme Court Cases 326 (1988)

Farm Foreclosures in Bankruptcy, 1987-88 ABA Preview of Supreme Court Cases 199 (1988)

Equal Access to Justice and Government Litigation, 1987-88 ABA Preview of Supreme Court Cases 160 (1988)

The Time Value of Money in Bankruptcy Cases, 1987-88 ABA Preview of Supreme Court Cases 116 (1987)

Getting the Fee First? Attorneys and the SSI Program 1987-88 ABA Preview of Supreme Court Cases 118 (1987)

The Farmer and the FDIC, 1987-88 ABA Preview of Supreme Court Cases 48 (1987)

Testing the Limits of Securities Fraud: Financial Gossip in the Court, 1987-88 ABA Preview of Supreme Court Cases 26 (1987)

Checks and Balances in the Twenty-First Century, 33 University of Chicago Law School Record 7 (1987)

Separation of Powers May Become Focus Over NSC, Legal Times, Dec. 15, 1986, at 15

If a Bank is a Broker, is a Brokerage a Branch? 1986-87 ABA Preview of Supreme Court Cases 65 (1986)

Attorney's Fees in the Supreme Court, American Bar Association Journal 40 (November, 1986)

The Contingency Factor in Attorney's Fees Reconsidered, 1986-87 ABA Preview of Supreme Court Cases 20 (1986)

Restitution and Bankruptcy in a Federal System, 1986-87 ABA Preview of Supreme Court Cases (1986)

Don't Limit Contingent Fees, Chicago Tribune, June 11, 1986

The Budget and the Separation of Powers: Gramm-Rudman in the Court, 1985-86 ABA Previews of Supreme Court Cases 359 (1986)

Keeping Attorneys' Fees in Proportion, 1985-86 ABA Preview of Supreme Court Cases 325 (1986)

Must the Federal Government Pay Interest on Attorneys' Fees Awards?, 1985-86 ABA Preview of Supreme Court Cases 241 (1986)

The Contingency Factor in Attorneys' Fees Awards, 1985-86 ABA Preview of Supreme Court Cases 243 (1986)

The FCC as Cop: Forcing State Public Service Commissions to Obey Federal Agency Orders, 1985-86 ABA Preview of Supreme Court Cases 191 (1986)

Preemption, Public Utilities, and Power Over Telephone Rate-Setting, 1985-86 ABA Preview of Supreme Court Cases 187 (1986)

A Bank is a Bank is a Bank -- or is it?, 1985-86 ABA Preview of Supreme Court Cases 67 (1985)

Settlement Offers Conditioned on Waiver of Attorneys' Fees: A Legal and Ethical Dilemma Confronts the Court, 1985-86 ABA Preview of Supreme Court Cases 55 (1985)

Bankruptcy and the Environment: The Case of Hazardous Wastes, 1985-86 ABA Preview of Supreme Court Cases 25 (1985)

A Different Approach to Interstate Banking, American Banker (August 8, 1985)

The SEC as Censor: Is Banning an Investment Advice Newsletter a Prior Restraint of the Press?, 1984-85 ABA Preview of Supreme Court Cases 243 (1985)

Enforcing Federal Rights in State Courts, 1984-85 ABA Preview of Supreme Court Cases 277 (1985)

Interstate Banking and the Constitution, 1984-85 ABA Preview of Supreme Court Cases 364 (1985)

The "Sale of Business" Doctrine in the Supreme Court, 1984-85 ABA Preview of Supreme Court Cases 344 (1985)

Sale of Business Revisited: Does the Doctrine Apply to Partial Sales of Corporate Control, 1984-85 ABA Preview of Supreme Court Cases 347 (1985)

Six Cases Shape Business Law, American Bar Association Journal 124 (Jan. 1985)

Offers of Settlement in Civil Rights Cases Pose Attorneys' Fees Question, 1984-85 ABA Preview of Supreme Court Cases 105 (1984)

Using Bankruptcy to Avoid Liability for Cleaning up Toxic Wastes, 1984-85 ABA Preview of Supreme Court Cases 36 (1984)

A Judicial Footnote Cemented the New Deal, Wall Street Journal, September 13, 1984

May Bank Holding Companies Provide Discount Brokerage Savings?, 1984-85 ABA Preview of Supreme Court Cases 575 (1984)

Blum v. Stenson: Fundamental Questions About Attorneys' Fees Awards to Public Interest Lawyers, 1984-85 ABA Preview of Supreme Court Cases 301 (1984)

Myths on the Midway, 30 Chicago Law School Record 13 (1984)

Smith v. Robinson: Another Step Towards Solving the Attorneys' Fees Puzzle? 1983-84 ABA Preview of Supreme Court Cases 437 (1984)

Securities Industry Association v. Board of Governors: Can Banks Distribute Commercial Paper? 1983-84 ABA Preview of Supreme Court Cases 425 (1984)

The "7-Eleven" Case: Arbitration v. Litigation in a Federal System, 1983-84 ABA Preview of Supreme Court Cases 161 (1983)

The Bildisco Case: Reconciling Federal Bankruptcy and Labor Policies, 1983-84 ABA Preview of Supreme Court Cases 169 (1983)

The "Daily Income Fund" Case: What Role Should a Mutual Fund's Board of Directors Play in Disputes over Investment Advisor Fees, 1983-84 ABA Preview of Supreme Court Cases 107 (1983)

Pulliam v. Allen: Should State Judges who Act Unconstitutionally Pay the Plaintiff's Attorneys' Fees?, 1983-84 ABA Preview of Supreme Court Cases 115 (1983)

"Shortsighted" Bill Proposes D.C. Court Divestiture, Legal Time of Washington, August 16, 1982

The Tax Bill May Be Unconstitutional, Baltimore Sun, August 16, 1982 (with Donald N. Bersoff)

# **EXHIBIT B**

## **Materials Reviewed**

### **Case Filings**

- 2017-07-07 Plaintiff's Original Petition
- 2017-08-15 Notice of Filing of Notice of Removal
- 2017-08-21 Dkt023 Sunoco Defendants' Answer to Original Petition
- 2018-09-10 Dkt055 Plaintiff's Motion to Compel and Integrated Brief in Support
- 2018-10-01 Dkt069 Sunoco Defendants' Brief in Response to Plaintiff's Motion to Compel and Integrated Brief
- 2018-10-09 Dkt076 Order Regarding Motion to Compel
- 2018-10-22 Dkt078 (UPDATED) Plaintiff's Response in Opposition to Sunoco Defendants' Motion for Judicial Approval of Confidential Designation of 30(b)(6) Deposition Excerpts and Brief in Support
- 2018-10-22 Dkt078 Plaintiff's Response in Opposition to Sunoco Defendants' Motion for Judicial Approval of Confidential Designation of 30(b)(6) Deposition Excerpts and Brief in Support
- 2019-05-06 Dkt088 Defendants' Response in Opposition to Plaintiff's Motion for Extension of Time
- 2019-05-06 Dkt089 Defendants' Amended Response in Opposition to Plaintiff's Motion for Extension of Time
- 2019-06-14 Dkt091 Motion to Certify Class, To Appoint Class Representative, and to Appoint Class Counsel and Brief in Support
- 2019-08-08 Dkt103 Defendants' Motion to Dismiss for Lack of Subject Matter Jurisdiction and Brief in Support
- 2019-08-14 Dkt105 Defendants' Response to Plaintiff's Motion to Certify Class
- 2019-08-14 Dkt107 Defendants' Motion To Exclude The Reports And Opinions Of Plaintiff's Proposed Expert, Barbara A. Ley
- 2019-08-22 Dkt109 Plaintiff's Response In Opposition To Defendants' Motion To Dismiss For Lack Of Subject Matter Jurisdiction And Brief In Support

- 2019-08-27 Dkt111 Plaintiff's Conditionally Unopposed Motion for Leave to File Oversized Brief
- 2019-08-28 Dkt113 Plaintiff's Opposition To Defendants' Motion To Exclude The Reports And Opinions Of Plaintiff's Proposed Expert Barbara A. Ley
- 2019-08-28 Dkt114 Plaintiff's Reply Brief In Support Of Motion To Certify Class, To Appoint Class Representative, And To Appoint Class Counsel And Brief In Support
- 2019-09-05 Dkt117 Defendants' Reply In Support Of Motion To Dismiss For Lack Of Subject Matter Jurisdiction And Brief In Support
- 2019-09-10 Dkt118 Defendants' Reply Brief In Support Of Defendants' Motion To Exclude The Reports And Opinions Of Plaintiff's Proposed Expert, Barbara A. Ley
- 2019-09-12 Dkt120 Plaintiff's Response In Opposition To Defendants' Motion For Leave To File Sur-Reply To Plaintiff's Reply Brief In Support Of Motion To Certify Class (Doc. No. 119)
- 2019-10-03 Dkt122 Opinion re Motion to Dismiss [Dkt103]
- 2019-10-03 Dkt123 Order Denying Motion to Dismiss
- 2019-10-03 Dkt126 Opinion re Motion to Certify Class [Dkt091]
- 2019-10-03 Dkt127 Order Granting Motion to Certify Class [Dkt091] and Defend
- 2019-10-03 Dkt128 Defendants' Sur-Reply To Plaintiff's Reply Brief In Support Of Motion To Certify Class, To Appoint Class Representative, And To Appoint Class Counsel And Brief In Support
- 2019-10-03 Dkt129 Order Directing Plaintiff to Submit a Proposed Notice Form
- 2019-10-11 Dkt136 Class Representative's Motion to Approve the Form and Manner of Class Notice
- 2019-10-14 Dkt138 Defendants' Reply Brief in Support of Motion to Stay Case Pending Rule 23(f) Appeal
- 2019-10-15 Dkt139 Class Representative's Brief Regarding Proposed Class Notification Process and Necessary Data
- 2019-10-15 Dkt140 Defendants' Brief Regarding Class Member Data in Response to Court Order of October 10, 2019 (DK. No.134)

- 2019-10-17 Dkt141 Petition Of Sunoco, Inc. (R&M) And Sunoco Partners Marketing & Terminals L.P. For Permission To Appeal Class Certification
- 2019-10-18 Dkt142 Class Representative's Motion For Partial Summary Judgment As To Defendants' Violation Of The Oklahoma Production Revenue Standards Act And Brief In Support
- 2019-10-25 Dkt144 Sunoco Defendants' Response To Class Representative's Motion To Approve The Form And Substance Of Class Notice
- 2019-10-29 Dkt146 Sunoco Defendants' Motion To Strike Or Continue Class Representative's Motion For Partial Summary Judgment
- 2019-10-30 Dkt150 Order Denying Defendants' Motion to Stay
- 2019-10-30 Dkt153 Order Denying Defendants' Motion to Strike or Continue Class
- 2019-11-01 Dkt159 Order Granting Motion to Approve the Form and Manner of Class
- 2019-11-01 Dkt160 Sunoco Defendants' Response to Class Representative's Motion for Partial Summary Judgment
- 2019-11-05 Dkt161 Class Representative's Reply In Support Of Motion For Partial Summary Judgment As To Defendants' Violation Of The Oklahoma Production Revenue Standards Act
- 2019-11-07 Dkt165 Class Representative's Reply In Support Of Motion For Partial Summary Judgment As To Defendants' Violation Of The Oklahoma Production Revenue Standards Act
- 2019-11-13 Dkt170 Order Denying Petition for Permission to Appeal Class Certification
- 2019-11-15 Dkt172 Sunoco Defendants' Motion to Clarify that Class Definition Does Not Include Escheat Payments to States, or Alternatively to Decertify Class or Exclude Escheat Payments From Class, And Brief In Support
- 2019-12-03 Dkt199 Class Representative's Response To Defendants' Motion For Leave To File Sur-Reply To Class Representative's Reply In Support Of Motion For Partial Summary Judgment
- 2019-12-10 Dkt231 Motion for Summary Judgment Opinion
- 2019-12-10 Dkt232 Motion for Summary Judgment Order

- 2020-10-30 Dkt340 Notice Of Appeal And Second Amended Notice Of Appeal Of Sunoco, Inc. (R&M) And Sunoco Partners Marketing & Terminal
- 2021-11-01 Doc. 010110598491 Order
- 2021-11-11 Doc. 0010110603626 Appellants Sunoco, Inc. (R&M) And Sunoco Partners Marketing & Terminals, L.P.'s Petition For Rehearing And Rehearing En Banc
- 2021-11-29 Doc. 010110610992 Order Denying Appellants' Petition for Rehearing and En Banc
- 2021-12-01 Petition for Writ of Mandamus
- 2021-12-03 Order Denying Appellants' Motion to Stay Issuance of the Mandate
- 2022-02-02 Doc. 010110640586 Order Denying Petition for Writ of Mandamus
- 2022-02-03 Dkt368 Order
- 2022-02-04 Dkt369 Order from Circuit Court Denying the Petition for Writ of Mandamus
- 2022-02-10 Dkt372 Defendants' Opposed Motion to Modify the Plan of Allocation Order And Issue A Rule 58 Judgment And Brief In Support
- 2022-02-16 Dkt376 Defendants' Motion to Enjoin Enforcement of the Judgment And Any Actions In Support Thereof And Brief In Support
- 2022-03-07 Dkt389 Class Representative's Motion For Statutory Costs And Fees Pursuant To 52 O.S. § 570.14 In The Stipulated Amount Of \$5,000,000.00
- 2022-03-07 Dkt390 Class Representative's Motion To: (1) Approve Form And Manner Of Notice To The Certified Class Of Class Counsel's Motion For Attorney's Fees And Litigation Expenses, And Class Representative's Motion For Case Contribution Award Pursuant To Rule 23(H); And (2) Approve Proposed Schedule
- 2022-04-06 Dkt407 Order Denying Motion to Modify the Plan of Allocation Order
- 2022-04-28 Petition for Writ of Certiorari
- 2022-04-29 Dkt408 Defendants' Notice of Appeal (Interlocutory)
- 2022-04-29 Dkt409 Defendants' Notice of Appeal

- 2022-06-24 Dkt422 Defendants' Notice of Appeal
- 2022-08-04 Dkt429 Order Dismissing Appeal
- 2022-10-03 Dkt452 [No Doc] SEALED Transcript of Proceedings of Sealed Hearing
- 2022-10-03 Dkt453 Garnishment Affidavit - Atlantic Trading & Marketing, Inc.
- 2022-10-03 Dkt454 Garnishment Affidavit - BP Products North America Inc.
- 2022-10-03 Dkt455 Garnishment Affidavit - Castleton Commodities Merchant Trading, L.P.
- 2022-10-03 Dkt456 Garnishment Affidavit - Energy Transfer Crude Marketing, LLC
- 2022-10-03 Dkt457 Garnishment Affidavit - Energy Transfer Crude Trucking, LLC
- 2022-10-03 Dkt458 Garnishment Affidavit - Gunvor USA, LLC
- 2022-10-03 Dkt460 Garnishment Affidavit - Marathon Petroleum Logistics Services
- 2022-10-03 Dkt461 Garnishment Affidavit - Marathon Petroleum Supply and Trading LLC
- 2022-10-03 Dkt462 Garnishment Affidavit - Motiva Enterprises, LLC
- 2022-10-03 Dkt463 Garnishment Affidavit - Phillips 66 Company
- 2022-10-03 Dkt464 Garnishment Affidavit - Range Resources Corporation
- 2022-10-03 Dkt465 Garnishment Affidavit - Saratoga RP East, LLC
- 2022-10-03 Dkt466 Garnishment Affidavit - Truman Arnold Companies
- 2022-10-03 Dkt467 Garnishment Affidavit - Valero Marketing & Supply Co
- 2022-10-03 Dkt468 Post-Judgment General Garnishment Summons - Atlantic Trading & Marketing, Inc.
- 2022-10-03 Dkt469 Post-Judgment General Garnishment Summons - BP Products North America Inc.
- 2022-10-03 Dkt470 Post-Judgment General Garnishment Summons - Castleton Commodities Merchant Trading, L.P.

- 2022-10-03 Dkt471 Post-Judgment General Garnishment Summons - Energy Transfer Crude Trucking, LLC
- 2022-10-03 Dkt472 Post-Judgment General Garnishment Summons - Energy Transfer Crude Trucking, LLC
- 2022-10-03 Dkt473 Post-Judgment General Garnishment Summons - Gunvor USA, LLC
- 2022-10-03 Dkt474 Post-Judgment General Garnishment Summons - Gunvor USA, LLC
- 2022-10-03 Dkt475 Post-Judgment General Garnishment Summons - Marathon Petroleum Logistics Services LLC
- 2022-10-03 Dkt476 Post-Judgment General Garnishment Summons - Marathon Petroleum Supply And Trading LLC
- 2022-10-03 Dkt477 Post-Judgment General Garnishment Summons - Motiva Enterprises, LLC
- 2022-10-03 Dkt478 Post-Judgment General Garnishment Summons - Phillips 66 Company
- 2022-10-03 Dkt479 Post-Judgment General Garnishment Summons - Range Resources Corporation
- 2022-10-03 Dkt480 Post-Judgment General Garnishment Summons - Saratoga RP East, LLC
- 2022-10-03 Dkt481 Post-Judgment General Garnishment Summons - Truman Arnold Companies
- 2022-10-03 Dkt482 Post-Judgment General Garnishment Summons - Valero Marketing & Supply Co.
- 2022-10-03 Supreme Court Order Denying Certiorari filed by Sunoco
- 2022-10-06 Dkt486 Post-Judgment General Garnishment Summons - Atlantic Trading & Marketing, Inc.
- 2022-10-06 Dkt487 Post-Judgment General Garnishment Summons - BP Products North America Inc.

- 2022-10-06 Dkt488 Post-Judgment General Garnishment Summons - Castleton Commodities Merchant Trading, L.P.
- 2022-10-06 Dkt489 Post-Judgment General Garnishment Summons - Energy Transfer Crude Marketing, LLC
- 2022-10-06 Dkt490 Post-Judgment General Garnishment Summons - Energy Transfer Crude Trucking, LLC
- 2022-10-06 Dkt491 Post-Judgment General Garnishment Summons - Gunvor USA, LLC
- 2022-10-06 Dkt492 Post-Judgment General Garnishment Summons - Marathon Petroleum Company LP
- 2022-10-06 Dkt493 Post-Judgment General Garnishment Summons - Marathon Petroleum Logistics Services LLC
- 2022-10-06 Dkt494 Post-Judgment General Garnishment Summons - Marathon Petroleum Supply And Trading LLC
- 2022-10-06 Dkt495 Post-Judgment General Garnishment Summons - Motiva Enterprises, LLC
- 2022-10-06 Dkt496 Post-Judgment General Garnishment Summons - Phillips 66 Company
- 2022-10-06 Dkt497 Post-Judgment General Garnishment Summons - Range Resources Corporation
- 2022-10-06 Dkt498 Post-Judgment General Garnishment Summons - Saratoga RP East, LLC
- 2022-10-06 Dkt499 Post-Judgment General Garnishment Summons - Truman Arnold Companies
- 2022-10-06 Dkt500 Post-Judgment General Garnishment Summons - Valero Marketing & Supply Co.
- 2022-10-19 Dkt527 Garnishment Affidavit
- 2022-12-21 Dkt606 Notice of Voluntary Dismissal of Garnishment Proceedings Without Prejudice
- 2023-01-03 Dkt608 Notice of Withdrawal of Opposition

- 2023-01-06 Dkt610 Order Scheduling Hearing on Motion for Fees and Costs

**Fee Orders in Other Cases**

- *Dorsey J. Reirdon v. Cimarex Energy Co.*, Case No. 6:16-cv-113-KEW  
Dkt. 105 - 2018-12-18 Order Awarding Attorneys' Fees
- *Paula Parks McClintock v. Enterprise Crude Oil LLC*, Case No. Civ-16-136-KEW  
Dkt. 120 - 2021-03-26 Order Awarding Attorneys' Fees
- *Chieftain Royalty Company v. QEP Energy Company (including affiliated predecessors and Successors)*, Case No. Civ-11-212-R  
Dkt. 182 - 2013-05-31 Order Granting [Dkt161] Motion for Attorneys' Fees
- *Dorsey J. Reirdon v. XTO Energy Inc.*, Case No. 6:16-cv-00087-KEW  
Dkt. 124 - 2018-01-29 Order Awarding Attorneys' Fees
- *Chieftain Royalty Company v. XTO Energy Inc.*, Case No. Civ-11-29-KEW  
Dkt. 231 - 2018-03-27 Order Awarding Attorneys' Fees
- *Albert Steven Allen and Randy Mark Allen v. Apache Corporation*, Case No. 6:22-CV-00063-JAR  
Dkt. 37 2022-11-16 Order Awarding Attorneys' Fees
- *Chieftain Royalty Company and Castlerock Resources, Inc. v. BP America Company*, Case No. 18-CV-54-JFH-JFJ  
Dkt. 180 - 2022-03-02 Order Awarding Attorneys' Fees
- *Michael Kernen, on Behalf of Himself and all others similarly situated v. Casillas Operating, LLC*, Case No. Civ-18-00107-JD  
Dkt. 125 - 2023-01-04 Order Awarding Attorneys' Fees
- *Donald D. Miller Revocable Family Trust, trustee Donald D. Miller, on behalf of itself, and all others similarly situated, v. DCP Operating Company, LP; and DCP Midstream, LP*, Case No. CIV-18-0199-JH  
Dkt. 98 - 2021-06-29 Order Awarding Attorneys' Fees
- *Hay Creek Royalties, LLC, on behalf of itself and all others similarly situated, v. Roan Resources LLC*, Case No. 19-CV-177-CVE-JFJ  
Dkt. 74 - 2021-04-28 Order Awarding Attorney's Fees
- *Bigie Lee Rhea v. Apache Corporation*, Case No. 6:14-cv-00433-JH  
Dkt. 505 - 2022-06-23 Order Awarding Attorneys' Fees

- *Chieftain Royalty Company v. SM Energy Company (including predecessors, successors and affiliates)*, Case No. CIV-18-1225-J  
Dkt. 115 - 2021-04-27 Order Awarding Attorneys' Fees
- *Chieftain Royalty Company v. Laredo Petroleum, Inc.*, Case No. 12-cv-1319-D  
2015-05-13 Dkt052 Order Awarding Attorneys' Fees, Litigation Expenses and Case Contribution Award
- *In re MGM Mirage Securities Litigation*, Case No. 2:09-cv-01558-GMN-VCF  
2016-03-01  
Dkt. 396 Order Awarding Attorney's Fees and Expenses and Lead Plaintiffs' Expenses and Lead Plaintiffs' Expenses Pursuant to 15 U.S.C. §78u-4(a)(4)
- *Cecil v. Ward Petroleum Corp.*, CJ-2010-462 (Okla. Dist. Ct. Grady Cty.)  
Final Order Awarding Attorneys' Fees, Litigation Expenses, and Case Contribution Award
- *Continental Resources, Inc. v. Conoco, Inc.*, No. CJ-95-739 (Okla. Dist. Ct. Garfield Cty. Aug. 22, 2005)  
Order on Motion for Attorney Fees, Litigation Expenses, and Class Representatives Fee
- *Drummond v. Range Res.*, CJ-2010-510 (Okla. Dist. Ct. Grady Cty.)  
Final Order Awarding Attorneys' Fees, Litigation Expenses, and Case Contribution Award
- *Robertson v. Sanguine, Ltd.*, No. CJ-02-150 (Okla. Dist. Ct. Caddo Cty. July 11, 2003)  
Order on Class Counsels' Motion for Attorneys' Fee, Representatives' Fee and Reimbursement of Litigation Expenses from the Common Fund
- *Velma-Alma Indep. Sch. Dist. No. 15, v. Texaco, Inc.* No. CJ-2002-304 (Okla. Dist. Ct. Stephens Cty. Dec. 22, 2005)  
Findings of Fact, Conclusions of Law, and Order Finally Approving Class Certifications, Class Settlements, and Class Counsels' Motion for Attorney Fees, Litigation Costs, and Class Representatives Fees from the Common Fund

### **Other**

- *State of Washington v. Johnson & Johnson; Janssen Pharmaceuticals, Inc.; Ortho-McNeil-Janssen Pharmaceuticals, Inc., n/k/a Janssen Pharmaceuticals, Inc.; Janssen Pharmaceutica, Inc. n/k/a Janssen Pharmaceuticals, Inc.; and XYZ Corporations 1 through 20*, Case No. NO. 20-2-00184-8 SEA  
2021-08-30 Plaintiff State of Washington's Fee Petition Pursuant to Order Denying Defendants' Motion to Compel Responses to First Set of Interrogatories

- *State of Washington v. Johnson & Johnson; Janssen Pharmaceuticals, Inc.; Ortho-McNeil-Janssen Pharmaceuticals, Inc., n/k/a Janssen Pharmaceuticals, Inc.; Janssen Pharmaceutica, Inc. n/k/a Janssen Pharmaceuticals, Inc.; and XYZ Corporations 1 through 20*, Case No. NO. 20-2-00184-8 SEA  
2021-09-30 Order Granting The State Of Washington's Fee
- *In re MGM Mirage Securities Litigation*, Case No. 708 Fed. Appx. 894 (2017)
- Class Counsel's Time Records
- Class Counsel's Expense Records
- Class Counsel's Declarations
- Declaration of JND Class Action Administration

**Absent Class Member Affidavits**

- Declaration of Dan Little (Sagacity)
- Declaration of Gina Steffano (Citadel)
- Declaration of Kelsie Wagner
- Declaration of Mike Weeks (Pagosa)
- Declaration of Rob Abernathy (Chieftain)
- Declaration of Robert Gonce (Castlerock)
- Declaration of Teresa Beauregard
- Declaration of Betty Woodruff Trust
- Declaration of Michael Kernen
- Declaration of Thomas Blakemore
- Declaration of Paul Walker

# EXHIBIT C

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The Honorable Patrick Oishi  
Trial Date: January 10, 2022

**STATE OF WASHINGTON  
KING COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,

NO. 20-2-00184-8 SEA

Plaintiff,

PLAINTIFF STATE OF WASHINGTON’S  
FEE PETITION PURSUANT TO ORDER  
DENYING DEFENDANTS’ MOTION TO  
COMPEL RESPONSES TO FIRST SET OF  
INTERROGATORIES

v.

JOHNSON & JOHNSON; JANSSEN  
PHARMACEUTICALS, INC.;  
ORTHO-MCNEIL-JANSSEN  
PHARMACEUTICALS, INC., n/k/a  
JANSSEN PHARMACEUTICALS, INC.;  
JANSSEN PHARMACEUTICA, INC. n/k/a  
JANSSEN PHARMACEUTICALS, INC.;  
and XYZ Corporations 1 through 20,

Defendants.

**I. INTRODUCTION**

On August 16, 2021 the Court entered an order denying the Johnson & Johnson Defendants’ (“J&J’s”) Motion to Compel Responses to their First Set of Interrogatories (the “Motion”) and directed that J&J pay the State’s fees and costs incurred in connection with its Response (the “Response”) to the Motion. *Order Denying Defendants’ Motion to Compel Responses to First Set of Interrogatories* (“Order”) Dkt. 282. In compliance with the Order, the State now submits this petition in support of its request for an award of reasonable attorneys’ fees in the amount of \$32,478.70.



1 therefore expended significant attorney time in the months preceding J&J’s Motion explaining  
2 to J&J the requirements under federal and state law that prevent the State from producing  
3 personal health information (“PHI”) in an effort to avoid motion practice. *See* Dkt. No. 188  
4 ¶¶ 5–7 (describing the parties’ meet and confers where the State raised concerns regarding the  
5 production of PHI); *id.*, Exs. 4–5 (correspondence providing J&J previous legal briefing on the  
6 statutory prohibitions against disclosing PHI and describing these protections in the context of  
7 J&J’s subpoenas to third parties seeking similar information). The State does not seek fees for  
8 that time, which is omitted from this petition.

9         The State also spent time opposing J&J’s attempt to compel responses to Interrogatory  
10 Nos. 1 and 2, which asked the State to definitively identify all false or misleading statements by  
11 J&J and to describe any risk the State alleges is not adequately disclosed by J&J’s labelling. *See*  
12 Dkt. No. 188, Ex. 2. Because J&J has resisted discovery into its Washington-specific activities,  
13 including the call notes and custodial files of its sales representatives, *see* Dkt. No. 193, and the  
14 State is not alleging a mislabeling theory, *see* Dkt. Nos. 26, 31, the State was required to expend  
15 resources briefing what it previously explained to J&J: The State has no additional relevant  
16 information to provide beyond its substantive responses to these interrogatories. *See* Resp.  
17 at 11–13.

18         To ensure an accurate portrayal of events, the State carefully reviewed prior  
19 correspondence and communications concerning J&J’s requests. In particular, the parties have  
20 had many discussions regarding J&J’s requests for PHI, with the State raising its concerns about  
21 such requests early and often. *See* Resp. at 2. For example, in negotiating the parties’ governing  
22 Protective Order and stipulation regarding the Prescription Monitoring Program (“PMP”), the  
23 State carefully explained the legal prohibitions against disclosing PHI. *See* Dkt. 70 at 5  
24 (Protective Order prohibits parties from attempting to identify individuals from health records);  
25 Dkt. 129 at 2–3 (PMP stipulation prohibits parties from identifying individuals from PMP data);  
26

1 | *see also* Dkt. 188, Ex. 1, McKesson, Order Denying Defendants’ Motion to Compel Health Data  
 2 | at 2–3 (“Accordingly, the Court does not order Plaintiff to disclose to Defendants patient names  
 3 | or contact information . . .”). The State also provided J&J with briefing on the same topic in the  
 4 | opioid distributor matter, where Judge Ferguson categorically rejected the defendants’ attempt  
 5 | to compel the State to produce patient identities or patient-identifying records, declined to order  
 6 | the State to provide identifying links between databases, and ordered defendants to pay the  
 7 | State’s fees on their motion. *See* Resp. at 7–8; Dkt. 188, Ex. 1 at 2–4, Ex. 4. Given this lengthy  
 8 | history of communication on the topic of PHI, the State was alarmed when J&J’s Motion failed  
 9 | to contend with these issues or the parties’ previous communication on the topic. J&J also  
 10 | refused to agree to an extended briefing schedule that would allow the State adequate time to  
 11 | address the significant privacy concerns implicated by the Motion and more fully present the  
 12 | issues through an application for a protective order. The State therefore expended significant  
 13 | time briefing the State’s long history of correspondence on the threat raised by J&J’s request for  
 14 | PHI.

15 |         The State also spent time necessary to conduct legal research, prepare the motion papers,  
 16 | review and analyze the legal authorities and arguments asserted by J&J in its Motion, and to  
 17 | prepare the State’s Response, four supporting declarations, and exhibits. The papers addressed  
 18 | statutory prohibitions against disclosing PHI and the irrelevance of information sought by each  
 19 | of the three interrogatories addressed in J&J’s Motion. Although the issues were complicated,  
 20 | the State’s attorneys had previously researched and addressed similar legal issues while  
 21 | negotiating and drafting the parties’ Protective Order in this matter, in briefing the same issue in  
 22 | *State of Washington v. McKesson et al.*, King County Superior Court, Cause No. 19-2-06975-9  
 23 | SEA, and in connection with the State’s earlier response to J&J’s Motion to Dismiss. *See*  
 24 | Dkt. Nos. 26; 188 ¶¶ 5, 7. These previous efforts reduced the amount of time the State would  
 25 | otherwise have spent in preparing the Response. Nevertheless, the relatively abbreviated briefing  
 26 |

1 schedule, which was necessitated by J&J's refusal to agree to the extended schedule requested  
 2 by the State, and the enormous stakes raised by J&J's Motion required the contributions of eight  
 3 attorneys.

4 As reflected in the time records submitted as Exhibit A to the Rodríguez López  
 5 Declaration, attorneys Brad Beckworth, Katherine Beran, Drew Pate, and Jessica Underwood  
 6 from the State's outside counsel, Nix Patterson, LLP, researched and drafted significant portions  
 7 of the Response. *See* Beckworth Decl.; Beran Decl.; Pate Decl.; Underwood Decl. From the  
 8 Office of the Attorney General, Martha Rodríguez Lopéz and Laura Clinton, Seattle Section  
 9 Chiefs for the Complex Litigation Division, assisted with drafting and editing the papers, as did  
 10 Assistant Attorneys General Jonathan Guss, and Joshua Weissman. *See* Rodríguez Lopéz Decl.;  
 11 Clinton Decl.; Guss Decl.; Weissman Decl.; Rodríguez Lopéz Decl., Ex. A. The State is not  
 12 seeking fees for time spent by other reviewing attorneys, or for the other professional staff whose  
 13 work was also required to prepare and file the Response brief and related papers.  
 14 Rodríguez Lopéz Decl. ¶ 7.

15 **B. Hourly Rates**

16 The Office of the Attorney General for the State of Washington (AGO) sets its hourly  
 17 rates for government attorneys practicing in complex civil litigation by reference to the rates  
 18 prevailing in the relevant legal community for similar services by lawyers of reasonably  
 19 comparable skill, experience, and reputation. Rodríguez Lopéz Decl. ¶ 8. Nix Patterson also sets  
 20 its hourly rates for attorneys practicing in complex civil litigation consistent with the rates  
 21 charged nationally for similar services by lawyers of reasonably comparable skill, experience,  
 22 and reputation. Beckworth Decl. ¶¶ 6–8.

23 The AGO and its outside counsel, respectively, have determined the hourly rate for each  
 24 attorney who worked on the Response based on their respective years of experience and skill.  
 25 As detailed in the supporting declarations filed herewith, the AGO's rates are far less than those  
 26

1 charged by private law firms for similar work, and they are substantially less than the rates  
 2 charged in the Seattle community for similar work by attorneys of similar experience—including  
 3 those working on this case. *See* Rodríguez Lopéz Decl. ¶¶ 8, 10. The rates charged by  
 4 Nix Patterson are in line with those charged by other private firms for attorneys with similar skill  
 5 and experience and reflective of the knowledge and skill offered by the firm. Beckworth Decl.  
 6 ¶¶ 6–8.

7 As itemized in Exhibit A to the Rodríguez Lopéz Declaration, the State incurred the  
 8 following attorneys’ fees in connection with the Motion:

Name	Position	Hourly Rate	Hours	Total
Martha Rodríguez Lopéz	Attorney	\$517.00	9.8	\$5,066.60
Laura K. Clinton	Attorney	\$543.00	2.3	\$1,248.90
Jonathan Guss	Attorney	\$396.00	19.7	\$7,801.20
Joshua Weissman	Attorney	\$466.00	24.5	\$11,417.00
Jessica Underwood	Attorney	\$650.00	2.3	\$1,495.00
Katherine Beran	Attorney	\$600.00	4.0	\$2,400.00
Drew Pate	Attorney	\$850.00	3.0	\$2,550.00
Brad Beckworth	Attorney	\$1,000.00	0.5	\$500.00
<b>Total</b>			66.1	\$32,478.70

15  
 16 *See also* Rodríguez Lopéz Decl. ¶¶ 3,6,8; Clinton Decl. ¶ 4; Guss Decl. ¶ 3; Weissman Decl. ¶ 3;  
 17 Beran Decl. ¶ 3; Underwood Decl. ¶ 3; Pate Decl. ¶ 3; Beckworth Decl. ¶¶ 3, 6-8.

### 18 **C. Findings and Challenges**

19 The State respectfully requests that the Court enter its proposed Order, submitted  
 20 herewith, which contains proposed findings based on the record.

21 The State does not know whether J&J will challenge the State’s petition, but if J&J does  
 22 assert that the hours claimed are excessive or the rates inappropriate, the State respectfully asks  
 23 that counsel be required to disclose the time and rates they charged their client to unsuccessfully  
 24 bring the Motion.

III. CONCLUSION

The total fees incurred in connection with the State’s Response that J&J should be ordered to reimburse the State is \$32,478.70. The State requests the Court enter the proposed order submitted herewith and direct J&J to pay the amount within seven (7) days.

DATED this 30th day of August 2021.

ROBERT W. FERGUSON  
Attorney General

/s/ Brad Beckworth

/s/ Lia E. Pernell

BRAD BECKWORTH (*pro hac vice*)  
JEFFREY ANGELOVICH (*pro hac vice*)  
LISA BALDWIN (*pro hac vice*)  
TREY DUCK (*pro hac vice*)  
DREW PATE (*pro hac vice*)  
WINN CUTLER (*pro hac vice*)  
ROSS LEONOUidakis (*pro hac vice*)  
JESSICA UNDERWOOD (*pro hac vice*)  
KATHERINE BERAN (*pro hac vice*)  
CODY HILL (*pro hac vice*)  
NATHAN HALL (*pro hac vice*)  
KIM SAINDON (*pro hac vice*)  
Nix Patterson, LLP  
3600 N. Capital of TX Hwy, Suite B350  
Austin, TX 78746  
(512) 328-5333  
bbeckworth@nixlaw.com  
jangelovich@nixlaw.com  
lbaldwin@nixlaw.com  
tduck@nixlaw.com  
dpate@nixlaw.com  
rossl@nixlaw.com  
winncutler@nixlaw.com  
junderwood@nixlaw.com  
kberan@nixlaw.com  
codyhill@nixlaw.com  
nhall@nixlaw.com  
ksaindon@nixlaw.com

MARTHA RODRÍGUEZ LÓPEZ, WSBA No. 35466  
JOSHUA WEISSMAN, WSBA No. 42648  
KELSEY E. ENDRES, WSBA No. 39409  
JONATHAN J. GUSS, WSBA No. 57663  
SUSAN E. LLORENS, WSBA No. 38049  
LIA E. PERNELL, WSBA No. 50208  
Assistant Attorneys General  
Complex Litigation Division  
800 Fifth Avenue, Suite 2000  
Seattle, WA 98104-3188  
(206) 464-7744  
martha.rodriguezlopez@atg.wa.gov  
joshua.weissman@atg.wa.gov  
kelsey.endres@atg.wa.gov  
jonathan.guss@atg.wa.gov  
susan.llorens@atg.wa.gov  
lia.pernell@atg.wa.gov

*Attorneys for Plaintiff State of Washington*

**DECLARATION OF SERVICE**

I declare that I caused a copy of the foregoing document to be electronically served using the Court's Electronic Filing System, which will serve a copy of this document upon all counsel of record.

Angelo J. Calfo, Attorney	angeloc@calfoeakes.com
Damon C. Elder, Attorney	damone@calfoeakes.com
Harold Malkin, Attorney	haroldm@calfoeakes.com
Kendall Cowles, Attorney	kendallc@calfoeakes.com
David Glanton, Attorney	davidg@calfoeakes.com
Carrie Todd, Paralegal	carriet@calfoeakes.com
Erica Knerr, Legal Assistant	ericak@calfoeakes.com
Stephen D. Brody, Attorney	sbrody@omm.com
Jason M. Zarrow, Attorney	jzarrow@omm.com
Charles Lifland, Attorney	clifland@omm.com
Peter D'Agostino, Attorney	pdagostino@omm.com
Nathaniel Asher, Attorney	nasher@omm.com
Anne Marchitello, Attorney	amarchitello@omm.com
Ross B. Galin, Attorney	rgalin@omm.com
Vinodh Jayaraman, Attorney	vjayaraman@omm.com
Matthew Kaiser, Attorney	mkaiser@omm.com
Amy Lucas, Attorney	alucas@omm.com
Zachariah A. Tafoya, Attorney	ztafoya@omm.com
Daniel M. Petrocelli, Attorney	dpetrocelli@omm.com
OMM Opioids Mail Drop Box	opioidsmailbag@omm.com
Tariq M. Naem, Attorney	tariq.naem@tuckerellis.com

DATED this 30th day of August 2021 at Seattle, Washington.

*/s/ Lia E. Pernell*

LIA E. PERNELL, WSBA No. 50208

# EXHIBIT D

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The Honorable Patrick Oishi  
Trial Date: January 10, 2022

**STATE OF WASHINGTON  
KING COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,

NO. 20-2-00184-8 SEA

Plaintiff,

ORDER GRANTING THE STATE OF  
WASHINGTON’S FEE ~~PETITION~~  
~~[PROPOSED ORDER]~~

v.

JOHNSON & JOHNSON; JANSSEN  
PHARMACEUTICALS, INC.;  
ORTHO-MCNEIL-JANSSEN  
PHARMACEUTICALS, INC., n/k/a  
JANSSEN PHARMACEUTICALS, INC.;  
JANSSEN PHARMACEUTICA, INC. n/k/a  
JANSSEN PHARMACEUTICALS, INC.;  
and XYZ Corporations 1 through 20,

Defendants.

The Court has reviewed the State of Washington’s Fee Petition Pursuant to Order Denying the Johnson & Johnson Defendants’ (J&J’s) Motion to Compel Responses to their First Set of Interrogatories (Fee Petition), the State’s proposed form of Order, and the records and pleadings already on file.

The Court finds that the 66.1 hours spent by the Attorney General’s Office and its outside counsel, Nix Patterson, LLP, in connection with the State’s Response to J&J’s Motion to Compel is a reasonable amount of time. The Court further finds that the \$32,478.70 in attorneys’ fees incurred by the Attorney General’s Office and its outside counsel is a reasonable amount of attorneys’ fees.

1 It is, therefore, ORDERED that the State of Washington’s Fee Petition is GRANTED.  
2 Defendants are directed to pay the State of Washington \$32,478.70 within seven days of this  
3 Order.

4 DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2021.

6 \_\_\_\_\_  
THE HONORABLE PATRICK OISHI

8 Presented by:

ROBERT W. FERGUSON  
Attorney General

10 /s/ Brad Beckworth

/s/ Lia E. Pernell

11 BRAD BECKWORTH (*pro hac vice*)  
12 JEFFREY ANGELOVICH (*pro hac vice*)  
13 LISA BALDWIN (*pro hac vice*)  
14 TREY DUCK (*pro hac vice*)  
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19 KATHERINE BERAN (*pro hac vice*)  
20 CODY HILL (*pro hac vice*)  
21 NATHAN HALL (*pro hac vice*)  
22 KIM SAINDON (*pro hac vice*)  
Nix Patterson, LLP  
3600 N. Capital of TX Hwy, Suite B350  
Austin, TX 78746  
(512) 328-5333  
bbeckworth@nixlaw.com  
jangelovich@nixlaw.com  
lbaldwin@nixlaw.com  
tduck@nixlaw.com  
dpate@nixlaw.com  
rossl@nixlaw.com  
winncutler@nixlaw.com  
junderwood@nixlaw.com  
kberan@nixlaw.com  
codyhill@nixlaw.com  
nhall@nixlaw.com  
ksaindon@nixlaw.com

MARTHA RODRÍGUEZ LÓPEZ, WSBA  
No. 35466  
JOSHUA WEISSMAN, WSBA No. 42648  
KELSEY E. ENDRES, WSBA No. 39409  
JONATHAN J. GUSS, WSBA No. 57663  
SUSAN E. LLORENS, WSBA No. 38049  
LIA E. PERNELL, WSBA No. 50208  
Assistant Attorneys General  
Complex Litigation Division  
800 Fifth Avenue, Suite 2000  
Seattle, WA 98104-3188  
(206) 464-7744  
martha.rodriquezlopez@atg.wa.gov  
joshua.weissman@atg.wa.gov  
kelsey.endres@atg.wa.gov  
jonathan.guss@atg.wa.gov  
susan.llorens@atg.wa.gov  
lia.pernell@atg.wa.gov

*Attorneys for Plaintiff State of Washington*

**DECLARATION OF SERVICE**

I declare that I caused a copy of the foregoing document to be electronically served using the Court's Electronic Filing System, which will serve a copy of this document upon all counsel of record.

Angelo J. Calfo, Attorney	angeloc@calfoeakes.com
Damon C. Elder, Attorney	damone@calfoeakes.com
Harold Malkin, Attorney	haroldm@calfoeakes.com
Kendall Cowles, Attorney	kendallc@calfoeakes.com
David Glanton, Attorney	davidg@calfoeakes.com
Carrie Todd, Paralegal	carriet@calfoeakes.com
Erica Knerr, Legal Assistant	ericak@calfoeakes.com
Stephen D. Brody, Attorney	sbrody@omm.com
Jason M. Zarrow, Attorney	jzarrow@omm.com
Charles Lifland, Attorney	clifland@omm.com
Peter D'Agostino, Attorney	pdagostino@omm.com
Nathaniel Asher, Attorney	nasher@omm.com
Anne Marchitello, Attorney	amarchitello@omm.com
Ross B. Galin, Attorney	rgalin@omm.com
Vinodh Jayaraman, Attorney	vjayaraman@omm.com
Matthew Kaiser, Attorney	mkaiser@omm.com
Amy Lucas, Attorney	alucas@omm.com
Zachariah A. Tafoya, Attorney	ztafoya@omm.com
Daniel M. Petrocelli, Attorney	dpetrocelli@omm.com
OMM Opioids Mail Drop Box	opioidsmailbag@omm.com
Tariq M. Naem, Attorney	tariq.naem@tuckerellis.com

DATED this 30th day of August 2021 at Seattle, Washington.

*/s/ Lia E. Pernell*

\_\_\_\_\_  
LIA E. PERNELL, WSBA No. 50208

King County Superior Court  
Judicial Electronic Signature Page

Case Number: 20-2-00184-8  
Case Title: STATE OF WASHINGTON vs JOHNSON & JOHNSON ET AL  
Document Title: ORDER  
  
Signed By: Patrick Oishi  
Date: September 30, 2021



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Judge: Patrick Oishi

This document is signed in accordance with the provisions in GR 30.

Certificate Hash: 9FE6803641CCD6B28195B29614DF30AE3A16A5FF  
Certificate effective date: 7/16/2018 2:07:06 PM  
Certificate expiry date: 7/16/2023 2:07:06 PM  
Certificate Issued by: C=US, E=kcscefiling@kingcounty.gov, OU=KCDJA,  
O=KCDJA, CN="Patrick Oishi:  
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