

# **EXHIBIT 22**

IN THE DISTRICT COURT OF GRADY COUNTY  
STATE OF OKLAHOMA

FILED IN DISTRICT COURT  
Grady County, Oklahoma

SEP - 9 2013 -4

JAMES A. DRUMMOND and )  
MARK PARRISH, Personal Representative )  
of the Estate of CHRIS PARRISH, )

*Plaintiffs,* )

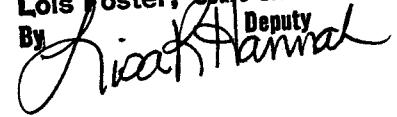
v. )

Case No. CJ-2010-510

RANGE RESOURCES CORPORATION, )  
RANGE RESOURCES-MIDCONTINENT, )  
LLC and RANGE PRODUCTION )  
COMPANY, )

*Defendants.* )

Lois Foster, Court Clerk  
By Deputy



**FINAL ORDER AWARDING ATTORNEYS' FEES, LITIGATION EXPENSES,  
AND CASE CONTRIBUTION AWARD**

WHEREAS, this matter comes before the Court on Class Representatives' Motion for Approval of Attorneys' Fees, Litigation Expenses and Case Contribution Award wherein Class Representatives and Class Counsel seek an award of attorneys' fees equal to 40% of the \$87,500,000 Settlement Amount, Litigation Expenses in the amount of \$641,852.06 [which consists of \$491,852.06 for past expenses and \$150,000.00 for future administrative expenses], and a Case Contribution Award of 1% of the \$87,500,000 Settlement Amount to be paid out of the Gross Settlement Fund;

WHEREAS, the Court conducted a hearing on the matter on September 9, 2013 (the "Final Fairness Hearing");

WHEREAS, the Court has considered all matters submitted to it at the Final Fairness Hearing and otherwise, the pleadings on file, the applicable law, and the record.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Court, for purposes of this Order, adopts all defined terms as set forth in the Settling Parties' Stipulation and Agreement of Settlement (the "Stipulation"), and incorporates them herein by reference as if fully set forth.

2. The Court, for purposes of this Order, incorporates herein its findings of fact and conclusions of law from its Judgment Granting Final Approval of Class Action Settlement and Form and Manner of Notice as if fully set forth.

3. The Settling Parties and Class Counsel provided the Court with abundant evidence in support of the Settlement, Class Counsel's requests for attorneys' fees and Litigation Expenses, and Class Representatives' request for a Case Contribution Award. Specifically, the Settling Parties and Class Counsel filed dozens of docket entries, including: seven (7) supporting affidavits (from Class Representatives and absent Class Members); multiple declarations (including declarations from mediator and former federal judge Layn Phillips, Class Counsel, and the Settlement Administrator); four (4) expert reports (on subjects ranging from damages calculations and the value of the Settlement to the propriety of Class Counsel's request for attorneys' fees); detailed legal memoranda, and other documents. This evidence and the Settling Parties' final motions were submitted to the Court one week before the objection and opt-out deadline.

4. The Court finds that all experts who submitted supporting declarations are qualified and reliable experts in their respective fields and provided relevant and compelling evidence. There were no challenges or objections to the experts, their declarations, or the opinions contained therein. Class Representatives and Class Counsel's expert, Geoffrey Miller, a professor of law at New York University and the former law clerk to Justice Byron White of the United States Supreme Court, is a leading scholar on attorneys' fees in class actions

nationwide. Professor Miller submitted his opinion through his declaration in support of the Settlement, Class Counsel's requests for attorneys' fees and Litigation Expenses, and Class Representatives' request for a Case Contribution Award. The Court finds Professor Miller's opinion to be reliable and persuasive.

5. The Notice stated that Class Counsel would apply for an award of attorneys' fees in an amount not to exceed forty percent (40%) of the Settlement Amount to be paid from the cash proceeds of the Settlement and the reimbursement of Litigation Expenses in an amount not to exceed \$900,000.00. In their Motion for an award of attorneys' fees and reimbursement of Litigation Expenses, Class Counsel requested attorneys' fees of 40% of the Settlement Amount, and stated that its expenses incurred to date were over \$672,000.00, but only requested reimbursement for \$524,612.57 of these expenses. Class Counsel also requested an additional \$240,000 in anticipated future expenses for the continued administration of the Settlement and the costs of any appeals, bringing the total expense request to \$764,612.57. By stipulation with the sole objector to the Settlement, and in order to avoid the delay of distribution to the Class of the settlement funds, Class Counsel agreed to reduce its total expense request from \$764,612.57 to \$641,852.06. This expense request consists of \$491,852.06 in past out-of-pocket expenses, plus \$150,000.00 in future expenses related to the continued administration of the Settlement and expert work.

6. Class Counsel is hereby awarded a total of \$641,852.06 in reimbursement of Litigation Expenses, plus accrued interest, and attorneys' fees in the amount of 40% of the Settlement Amount (or \$35,000,000.00), plus accrued interest, which sums the Court finds to be fair and reasonable. The foregoing awards of fees and expenses shall be paid to Class Counsel from the Gross Settlement Fund, and such payment shall be made at the time and in the manner

provided in the Stipulation, with interest from the date the Settlement Fund was funded to the date of payment at the same net rate that interest is earned by the Settlement Fund. The appointment and distribution among Plaintiffs' Counsel of any award of attorneys' fees shall be within Class Counsel's sole discretion.

7. In making this award of attorneys' fees and reimbursement of Litigation Expenses to be paid from the Cash Settlement Fund, the Court makes the following findings of fact and conclusions of law in addition to those set forth above:

- (a) Plaintiffs initiated this action over two and a half years ago by filing a class action complaint against Range in this Court on December 7, 2010 (the "Action");
- (b) Upon Plaintiffs' Motion for Class Certification, the Court certified a class on February 19, 2013;
- (c) The Action ultimately settled in May 2013, resulting in the filing of Class Representatives' Motion for Approval of Attorneys' Fees, Litigation Expenses and Case Contribution Award;
- (d) The Settlement value upon which the attorneys' fee calculation should be based in this case is \$87.5 million. Pursuant to the terms of the Stipulation, Range agreed to pay \$87.5 million in cash, which is already on deposit, plus interest thereon, to be distributed to the royalty owners in Oklahoma Wells from which Range sold gas during the Class Period;
- (e) Approximately 8,998 copies of the Notice of Proposed Settlement, Motion for Attorneys' Fees and Fairness Hearing (the "Notice") were disseminated to Class Members, stating that Class Counsel were moving for attorneys' fees not to exceed 40% of the \$87.5 million Settlement Amount and reimbursement of Litigation Expenses from

the Settlement Fund in a total amount not to exceed \$900,000.00. Class Representatives filed their Motion for Approval of Attorneys' Fees, Litigation Expenses and Case Contribution Award seven (7) days prior to the deadline for objections in this Action. No objections were filed in opposition to final approval of the proposed Settlement and only one (1) objection was filed in opposition to the request for attorneys' fees and reimbursement of Litigation Expenses. That objection was withdrawn prior to the Final Fairness Hearing. To the extent any objection to the Settlement or to the requests for attorneys' fees, Litigation Expenses, or a Case Contribution Award remains, such objection is overruled;

(f) The Settlement in this case created a common fund of \$87.5 million. Class Counsel who obtain a common fund settlement for a class are entitled to a reasonable attorneys' fee awarded from that fund 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." *Gottlieb v. Barry*, 43 F.3d 474, 482 (10th Cir. 1994) (quoting *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980)). Oklahoma recognizes the propriety of contingent fee arrangements in class action cases. *Sholer v. State ex rel. Dept. of Public Safety*, 990 P.2d 294, 299 (Okla. Civ. App. Div. 3 1999). Further, the Oklahoma Supreme Court has affirmed that the attorneys' fee awarded should bear a reasonable relationship to the amount in controversy. *Arkoma Gas Co. v. Otis Eng'g Corp.*, 849 P.2d 392, 394 (Okla. 1993). This is because, absent the possibility of substantial attorneys' fees, most attorneys would not assume the extensive risks associated with challenging large corporations. *Deposit Guar. Nat'l Bank v. Roper*, 445 U.S. 326, 339 (1980);

(g) In Oklahoma royalty underpayment class actions, courts, including this one, typically award attorneys' fees using the percentage of the fund approach at a rate of 40% of the fund. *Continental Resources, et al. v. Conoco*, Cases CJ-95-739 and CJ-2000-356, Aug. 22, 2005 Order at \*8, District Court of Garfield County, Oklahoma (stating "[t]he fee percentage in these types of cases is typically 40% of the gross fund," and awarding 40% of \$23 million fund); *see e.g., Tatum v. Devon Energy Corp.*, CJ-10-77, District Court of Nowata County, OK (April 18, 2013) (45% of \$3.8 million fund); *Mitchusson v. EXCO*, CJ-2010-32, District Court of Caddo County, Oklahoma (2012) (40% of the \$23,500,000 fund); *Taylor v. ChevronTexaco*, CJ-2002-204, District Court of Texas County, OK (2009) (40% of \$12 million fund); *Brown v. Citation*, CJ-04-217, District Court of Caddo County, OK (2009) (40% of \$5,250,000 fund); *Simmons v. Anadarko*, CJ-2004-57, District Court of Caddo County, Oklahoma (2008) (40% of the \$155,000,000 fund); *Laverty v. Newfield*, CJ-98-06012, District Court of Tulsa County, OK (2007) (40% of \$17,250,000 fund); *Lobo v. BP*, CJ-97-72, District Court of Beaver County, Oklahoma (2005) (40% of the \$150,000,000 fund in a working-interest owner class action); *Velma-Alma v. Texaco*, CJ-2002-304, District Court of Stephens County, OK (2005) (40% of \$27 million fund); *Kouns v. ConocoPhillips*, CJ-98-61, District Court of Dewey County, OK (2004) (42% of \$4,300,000 fund); *Robertson v. Sanguine*, CJ-02-150, District Court of Grady County, OK (2003) (40% of \$13,250,606 fund); *McIntoush v. Questar*, CJ-02-22, District Court of Major County, OK (2002) (40% of \$1.5 million fund); *Rudman v. Texaco*, CJ-97-1E, District Court of Stephens County, OK (2001) (40% of \$25 million fund).

(h) Under the percentage of the fund method, Courts in Oklahoma may analyze the

reasonableness of the requested fee under the factors set out in *Oliver's Sports Ctr., Inc. v. Nat'l Standard Ins. Co.*, 615 P.2d 291, 295 (Okla. 1980). Those factors are: (1) the 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; and (12) awards in similar causes. *Oliver's Sports Ctr.*, 615 P.2d at 295. The Court notes that the provision of 12 Okla. Stat. § 2023, which codified these factors as mandatory requirements, was held unconstitutional and voided in its entirety on June 4, 2013 by the Oklahoma Supreme Court. *See Douglas v. Cox Retirement Properties, Inc.*, 302 P.2d 789 (Okla. 2013). However, in analyzing the reasonableness of the requested attorneys' fee here, the Court used these factors as guiding principles in conjunction with all other applicable law and precedent regarding the award of attorneys' fees in class actions in Oklahoma and in light of the evidence presented.

(i) The Court finds that Class Counsel expended thousands of hours in prosecuting this action on behalf of the Class, engaging in substantial fact and expert discovery, overcoming dispositive motions, obtaining hard-fought class certification, and ultimately achieving an outstanding Settlement through grueling litigation and an intense mediation. Of course, "[f]ees cannot fairly be awarded on the basis of time alone." *Oliver's Sports Ctr.*, 615 P.2d at 294. This is because "[t]he use of time as the sole criterion is of dubious



value because economy of time could cease to be a virtue; and inexperience, inefficiency, and incompetence may be rewarded to the detriment of expeditious disposition of litigation.” *Id.* Here, in the more than two and half years since this Action was filed, Class Counsel has displayed the efficiency and competency to be expected of experienced royalty class action attorneys.

(j) The market rate for Class Counsel’s legal services is a primary consideration in the determination of a reasonable percentage to be awarded from the common fund as attorneys’ fees. *Millsap v. McDonnell Douglas Corp.*, No. 94-CV-633-H(M), 2003 U.S. Dist. LEXIS 26223, at \*26 (N.D. Okla. May 28, 2003). Again, Oklahoma courts have expressly recognized the propriety of contingent fee arrangements in class action cases. *Sholer*, 990 P.2d at 299. Here, each Class Representative negotiated at arm’s length and agreed to a 40% contingency fee at the beginning of this case, reflecting the value Class Representatives placed on the future success of this Action. Class Representatives fully support Class Counsel’s fee request. And, Class Representative James A. Drummond, who is also an attorney, has a long-standing relationship with Class Counsel. In addition, five absent Class Members filed affidavits with the Court endorsing the 40% fee request;

(k) Additionally, the number of opt-outs, approximately ten (10) Class Members, is *de minimus*. The extensive notice campaign overseen by Class Counsel resulted in 8,998 Notices being sent directly to Class Members representing at least 92% of the Net Settlement Fund, and additional notice was provided by publication (both online and in newspapers). Still, only ten Class Members opted out. These ten Class Members represent approximately 0.04 percent of the Settlement Amount. Thus, the near absence of opt-outs supports Class Counsel’s attorney’s fee and expense request.

(l) That courts in cases similar to this Action have awarded similar fees also supports the fee request. Again, attorneys' fees awarded in oil and gas class actions brought in Oklahoma State courts in recent years is especially informative. *See ¶(g) supra*;

(m) Former federal Judge Layn Phillips, who mediated the Settlement and is familiar with the strengths and weakness of the parties' claims, stated his opinion that Class Counsel's request for 40% fee is fair and reasonable under the specific facts and circumstances of this case. Class Representatives' expert, Professor Miller, an experienced academic in the subject of class action attorneys' fees, also expressed his expert opinion in support of the fee requested here;

(n) The amount involved and the substantial recovery obtained for the Class also support the fee request. Class Counsel achieved an excellent result for the Class. If Range had prevailed on its statute of limitations defense, the best possible recovery for the Class in past principal would have been approximately \$24.6 million. The Settlement is more than three times this amount;

(o) This Action posed complex issues. Had Class Counsel not achieved the Settlement, there would remain a significant risk that Class Representatives and the Class may have recovered less or nothing from Range;

(p) Class Counsel are highly experienced and skilled attorneys in oil and gas royalty underpayment actions and complex class action litigation and were well qualified to litigate the issues in this Action. Class Counsel has conducted the litigation and achieved the Settlement in good faith and with skill, perseverance and diligent advocacy. The favorable Settlement obtained in this Action is the direct result of Class Counsel's excellent work throughout the litigation and settlement negotiations;

(q) The Action was actively prosecuted for over two and a half years and, in the absence of a settlement, would involve further lengthy proceedings with uncertain resolution of the complex factual and legal issues; and

(r) The Court finds an attorneys' fee award of 40% of the \$87.5 million Settlement Amount paid from the Gross Settlement Fund is appropriate in this case. The Court concludes the 40% fee award is fair and reasonable under all of the circumstances and considering the applicable law and precedent and the evidence presented.

8. As stated above, Class Representatives and Class Counsel are awarded \$641,852.06 in reimbursement of Litigation Expenses. The actual amount of Class Counsel's out-of-pocket expenses to date is \$750,514.20. However, Class Counsel only seeks to recover \$491,852.06 in past expenses to date, which is less than their actual expenses. Because additional expenses may continue to be incurred through the remainder of the litigation, including additional expenses for administration and expert work, Class Counsel specifically requests reimbursement of an additional \$150,000.00 in expenses. This brings the total request for Litigation Expenses to \$641,852.06, which is substantially less than the \$900,000.00 stated in the Notice. The magnitude and complexity of this case further supports the reasonableness of Class Counsel's expense request, as does the fact that Class Counsel independently chose to reduce its expense request by more than \$150,000.00 when it filed its request for reimbursement on August 19, 2013. The Court concludes Class Counsel's expenses to date were necessary and reasonable to litigate and resolve the Action. Class Counsel submitted detailed expense charts demonstrating that all expenses were reasonable and were actually incurred in the prosecution of this Action on behalf of the Class. Moreover, the Court received only one objection to the expense request, which has been withdrawn. The Court also finds that Class Counsel should be

reimbursed for any additional expenses incurred through the remainder of this litigation, not to exceed \$150,000.00, if such expenses are incurred.

9. Finally, Class Representatives are hereby awarded a Case Contribution Award of 1% of the \$87.5 million Settlement Amount. In making this Case Contribution Award to be paid from the Settlement Fund, the Court makes the following findings of fact and conclusions of law:

- (a) The Notice stated that Class Representatives would move for a Case Contribution Award of one percent (1%) of the Settlement Amount in the aggregate for Class Representatives. Class Representatives filed their Motion for Approval of Attorneys' Fees, Litigation Expenses and Case Contribution Award seven (7) days prior to the deadline for objections in this Action. In response, zero objections were filed in opposition to this Request for Case Contribution Award;
- (b) Class Representatives request a Case Contribution Award for Class Representatives James A. Drummond and Mark Parrish, personal representative of the estate of Chris Parrish, in the amount of 1% of the \$87.5 million Settlement Amount;
- (c) Case contribution awards are meant to "compensate class representatives for their work on behalf of the class, which has benefited from their representation." *In re Marsh ERISA Litig.*, 265 F.R.D. 128, 150 (S.D.N.Y. 2010). Oklahoma courts commonly award case contribution awards of 1% of the gross common fund. *Brown v. Citation*, CJ-04-217, District Court of Caddo County, Oklahoma (2009) (awarding 1% of \$5,250,000 settlement fund); *Velma-Alma Indep. Sch. Dist. No. 15 v. Texaco, Inc.* No. CJ-2002-304, District Court of Stephens County, Oklahoma (2005) (awarding 1-2% of total settlement amounts); *Robertson v. Sanguine, Ltd.*, No. CJ-02-150, District Court of Caddo County, Oklahoma (2003) (awarding 1% class representative fee); *Continental Resources, Inc. v.*

*Conoco, Inc.*, No. CJ-95-739, District Court of Garfield County, Oklahoma (2005) (“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.”); *Hitch Enters., Inc. v. Cimarex Energy Co.*, No. CIV-11-13-W (W.D. Okla. July 2, 2013) (awarding 1% of the settlement amount and holding “the incentive award sought by [class representatives] is consistent with incentive awards in other royalty owner class actions litigated in Oklahoma.”).

(d) The Court finds James A. Drummond is entitled to a Case Contribution Award. Mr. Drummond, an individual royalty owner and Class Member who also happens to be an attorney, has been actively involved in this action since its inception over two and half years ago. Mr. Drummond has contributed his knowledge and skill in the oil and gas industry, and as an attorney, has produced documents, reviewed and approved drafts of all substantive pleadings prior to filing, communicated regularly with Class Counsel, monitored and contributed to formal mediation sessions, and approved the terms of the Settlement. Mr. Drummond’s efforts helped lead to a settlement that greatly benefits the Class, and he should be rewarded for those efforts. The Court concludes a Case Contribution Award is reasonable and should be awarded to Mr. Drummond;

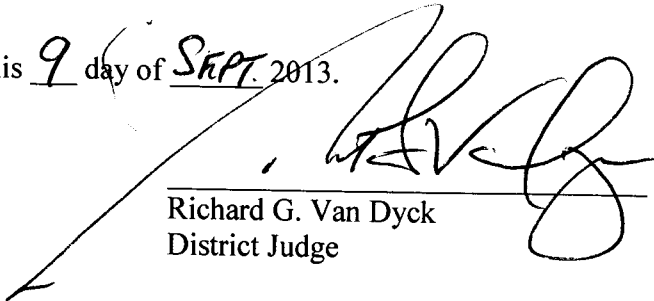
(e) The Court further finds Mark Parrish, as personal representative of the Estate of Chris Parrish, is entitled to a Case Contribution Award as well. Mr. Parrish, has actively participated in this litigation since becoming involved as Class Representative and continuing the efforts of his father, Chris Parrish, who passed away during the pendency of this Action. Specifically, both Chris and Mark Parrish reviewed pleadings, motions and other court filings, communicated regularly with Class Counsel, responded to

document requests and interrogatories, searched for and produced documents and monitored all mediation sessions. Based on the Parrishes' significant efforts and contributions in this case, the Court finds a Case Contribution Award is reasonable and should be awarded to Mark Parrish as personal representative of the estate of Chris Parrish; and

(f) Class Representatives are hereby awarded a total of one percent (1%) of the Settlement Amount (or \$875,000.00) in the aggregate, which the Court finds to be fair and reasonable. The foregoing award shall be paid to Class Representatives from the Settlement Fund, and such payment shall be made at the time and in the manner provided in the Stipulation, with interest from the date the Settlement Fund was funded to the date of payment at the same net rate that interest is earned by the Settlement Fund. The appointment and distribution among Class Representatives of any Case Contribution Award shall be within their sole discretion.

10. There is no reason for delay in the entry of this Judgment and immediate entry by the Clerk of the Court is expressly directed pursuant to § 994 of the Oklahoma Code of Civil Procedure.

IT IS SO ORDERED this 9 day of SEPT. 2013.

  
Richard G. Van Dyck  
District Judge

IN THE DISTRICT COURT OF WOODS COUNTY

**FILED**

STATE OF OKLAHOMA

**MAR 5 2009**

GLEN D. SACKET, For Himself and All Others  
Similarly Situated,

Plaintiff,

vs.

GREAT PLAINS PIPELINE COMPANY  
(formerly known as Magic Circle Energy  
Corporation); CARMEN ACQUISITION  
CORP.; CARMEN FIELD LIMITED  
PARTNERSHIP; CARMEN DEVELOPMENT  
CORPORATION; CARLTON RESOURCES,  
INC.; RAM ENERGY, INC.; RAM ASSET  
MANAGEMENT COMPANY; TALLEY  
HOLDINGS, INC.; DLB OIL & GAS, INC.;  
DLB ACQUISITION, L.L.C.; CHESAPEAKE  
EXPLORATION LIMITED PARTNERSHIP;  
WELLS FARGO BANK, N.A.; AND, MAGIC  
CIRCLE ACQUISITION CORPORATION,

Defendants.

WOODS COUNTY, OKLAHOMA  
DELLA DUNNIGAN, COURT CLERK  
BY \_\_\_\_\_ DEPUTY

Case No. CJ-2002-70

**ORDER ON MOTION FOR ATTORNEY FEES, LITIGATION  
EXPENSES, AND CLASS REPRESENTATIVE'S FEE**

This matter came on for hearing on the 5th day of March, 2009, on Class Representative's and Class Counsels' Motion for Attorney Fees, Litigation Expenses and Class Representative's Fee from the Common Fund (the "Fee Application"). All named parties were present and represented by counsel, and no opposing parties appeared. After reviewing the motion and all related pleadings, having reviewed the evidence submitted, having heard the testimony and arguments presented, and being fully advised in the premises, **THE COURT FINDS AND ORDERS AS FOLLOWS:**

**Notice and Objections:**

1. Notice of this hearing was properly mailed to Plaintiff Class Members and published pursuant to the Plan of Notice specified in the Settlement Agreement and approved by the Court in its Order dated October 14, 2008. The Court now finds, orders, and adjudges that the notice to the Plaintiff Class of this hearing was proper and sufficient under Okla. Stat. Tit. 12, § 2023 and otherwise applicable law, including the Due Process Clause of the United States Constitution and the Due Process Clause of the Constitution of the State of Oklahoma.

2. The Court further finds that the only objection timely filed pursuant to the Court's Order dated October 14, 2008, was by Class Member, Kenneth Byrd. The Court further notes that on March 2, 2009, Mr. Byrd withdrew all of his objections to the Fee Application. The Court is satisfied that the lack of any objections alone suggests that the Fee Application is fair and reasonable and indicative of the adequacy of the settlement.

**Attorneys' Fees:**

3. This court notes that the Annotated *Manual for Complex Litigation*, Fourth Edition 2005, § 14, p. 207 indicates "In class actions involving monetary stakes, the natural conflict that arises between lawyers and class members necessarily draws the judge into the role of regulating and awarding attorney fees. Unless the judge protects the interests of absentee class members, those interests may go unrepresented." In addition, the Court is well aware of its obligations under 5 O.S. § 7.1 which provides as follows:

In class actions, in making an award of attorney fees, the court shall conduct an evidentiary hearing to determine a fair and reasonable fee for class counsel. In making such determination, the court shall act in a fiduciary capacity on behalf of the class.



The Court, in rendering this opinion, has carefully and independently considered the testimony of class counsel, the pleadings filed herein, including the authority attached to class counsel's fee application and the testimony of the class expert. The Court takes judicial notice of the time expended by Class Counsel directly before the Court and the vast amount of work required to advance a case of this complexity. The Court takes its role seriously and has taken independent and reasonable precautions to protect the interests of the class in undertaking its duties.

4. *Newberg on Class Actions*, Fourth Edition, § 14.6, p. 550, indicates that a fixed percentage, no matter the size of the common fund, aligns the interests of the class and class counsel so that as the settlement/judgment amount increases, the attorneys' fees do so proportionately. This suggests that a system using such a fixed percent mimics the market, and is best for both the class and class counsel. The Court's analysis is that the award must be based upon the specific facts of the case. Clearly, the settlement amount is to be considered within the facts of the particular case.

5. The Court incorporates the authorities and standards set forth in Plaintiff's Motion, including the authorities set forth within the exhibits thereto, and in the *Manual for Complex Litigation* and Oklahoma jurisprudence all of which approve the award of fees in a case such as this as a percentage of the common fund. In class actions, percentage or contingency fees have important advantages that provide self-regulating incentives for efficiency and compensates counsel on the real value of the services provided.

6. Considering the factors set out in *Burk*<sup>1</sup> and the additional factors listed in the *Manual for Complex Litigation*<sup>2</sup>, this court will evaluate the requests of counsel in light of the facts of this particular case, to wit:

- a. The efforts that led to the filing of this class action began in 2001 when the Class Representative began to suspect that his check details did not accurately reflect their fair share of royalty interest. After a preliminary investigation, the Class Representative filed the instant action as a class action against the Defendants. The Class Representative and Class Counsel conducted extensive document, interrogatory and deposition discovery throughout the course of this extended litigation. An extended five day evidentiary trial was held on June 13, 2006 through June 15, 2006, and August 8, 2006 through August 9, 2006, on the issue of class certification. On January 11, 2007, the Court certified the case as a class action. Class certification was appealed by the Defendants and subsequently affirmed by the Oklahoma Court of Civil Appeals. Each of the Defendants has filed a petition for a writ of certiorari with the Oklahoma Supreme Court and all briefing has been completed. The legal issues in this case (including issues related to discovery, class certification and summary judgment on various issues) have been briefed and argued extensively throughout the history of this case.
- b. Class Counsel successfully overcame several motions for summary judgment. In addition, class counsel have engaged in extensive discovery, depositions and reviewing hundreds of boxes of documents in addition to electronic discovery. There have been contested hearings pertaining to this discovery.
- c. Notice was mailed to approximately 1,300 class members and published. The opt-outs were few and there were no objections to the settlement itself.
- d. The parties have retained and worked extensively with accounting and gas marketing experts.
- e. Each portion of these matters heard by this court was skillfully and hotly contested by counsel; including both extensive pre-hearing briefs, and then supplementary verbal arguments.
- f. In accomplishing all of the above, to date Class counsel has expended significant sums of money (the "litigation expenses" requested were \$325,000.00), plus in excess of 10,000 hours of billable time (the bill submitted for this calculated as the respective hourly rates for each of the respective attorneys aggregates approximately \$3,212,000). This translates to great risks, skill and effort expended over a lengthy period of time by very tenacious counsel for the Class.
- g. A settlement agreement has been executed by the parties, and approved by this court for \$25,000,000. This amount has been deposited in a secure account where it is now drawing interest. The gross recovery equates to approximately \$3.00/MCF for class members. Thus, this is an outstanding settlement.

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<sup>1</sup> *State ex rel. Burk v. City of Oklahoma City*, 1979 OK 115, 598 P.2d 659.

<sup>2</sup> *Annotated Manual for Complex Litigation*, Fourth Edition 2005, § 14.12, p. 214. See below.

- h. There are no pending objections before the Court<sup>3</sup>. A certain number of objections may be expected in cases with a large number of class members. If only a small number of objections are received, that fact can be viewed as indicative of the adequacy of the settlement. *See generally*, Newberg on Class Actions, 4<sup>th</sup> ed., §11:41 (2002), citing to *In re Austrian and German Bank Holocaust Litigation*, 80 F.Supp.2d 164, 174-75 (S.D.N.Y. 2000). A small number of objectors is one indication to the fairness of a settlement. *See generally*, Newberg on Class Actions, 4<sup>th</sup> ed., §11:48 (2002). The court considers the Class response to the settlement as an indication that the settlement is an excellent recovery.
- i. Finally the Class representative executed a contingency fee agreement with Class Counsel allowing them an attorneys' fee of Forty (40%) percent of the common fund.
- j. In addition to the facts above, Class Counsel presented an expert witness who has significant experience in similar class action litigation, Terry Stowers. Mr. Stowers indicated as follows:
  - i. He has extensive experience in similar class action litigation, and that there were few firms within this state who handle such litigation due both to the extreme risks and the amount of expertise involved.
  - ii. The case at bar was very complex and difficult litigation with excellent defense counsel. Thus, plaintiff's counsel was equally skilled and tenacious. Class Counsel overcame substantial obstacles in getting the case certified which was affirmed on appeal.
  - iii. Further, had this matter have gone to trial, the estimate is many more years of litigation which could more than double the time required, expenses, and significantly increase the risks. For example, should the class lose one or more of the issues, then their recovery could be significantly reduced. Thus, while recovery could be lower or higher than the settlement, should this have proceeded to trial, the risks and expenses of said trial certainly militate in favor of this excellent settlement.
  - iv. As noted above, this was an outstanding settlement. Further, it was accomplished in great part due to the tenacity and skill of class counsel. These attorneys should reap rewards for their diligence, skill and due to the risks involved.

7. *Newberg*<sup>4</sup> and the *Manuel for Complex Litigation*<sup>5</sup> approve of the common fund doctrine, and allow taking a percentage or contingency of the fund created in settlement of the case as the attorney's fees for plaintiff's counsel. The Oklahoma Supreme Court has recognized

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<sup>3</sup> The Court notes that an objection was initially filed by class member, Kenneth Byrd. However, this objection was withdrawn on March 2, 2009.

<sup>4</sup> *Newberg on Class Actions*, Fourth Edition, § 14.6.

<sup>5</sup> *Annotated Manual for Complex Litigation*, Fourth Edition 2005, § 14.121

the long standing common law principal that a party or attorney who helps create a “common fund” is entitled to recover a fee from that common fund.

As a general rule attorney's fees are not recoverable absent some statutory authority or an enforceable contract. The common-fund (or equitable-fund) doctrine affords a recognized exception to this rule. **When an individual's efforts succeed in creating or preserving a fund which benefits similarly situated non-litigants, equity powers may be invoked to charge that fund with attorney's fees for legal services rendered in its creation or preservation. The doctrine is rooted in historic equity jurisdiction, but owes its sudden appearance in this country to U.S. Supreme Court jurisprudence of the last century. Oklahoma case law has long recognized the doctrine.** [Footnote citations omitted. Emphasis added.]

*Oklahoma Tax Commission v. Ricks*, 1994 OK 115, 885 P.2d 1336, 1339.

It is well settled that ordinarily "a court in the exercise of equitable jurisdiction, will, in its discretion, **order an allowance of counsel fees, or, as it is sometimes said, allow costs as between solicitor and client, to a complainant (and sometimes directly to the attorney) who at his own expense has maintained a successful suit for the preservation, protection, or increase of a common fund, or of common property, or who has created at his own expense, or brought into court, a fund in which others may share with him.**" [Citations omitted. Emphasis added.]

*State ex rel. Board of Com'rs of Harmon County v. Oklahoma Tax Com'n*, 1944 OK 250, ¶4 151 P.2d 797.

The plaintiff claims the right to the allowance of an attorney's fee under the rule that a court of equity, or **a court in the exercise of equitable jurisdiction, will, in its discretion, order the allowance of attorney fees to counsel who at his own expense maintained a successful suit for the preservation, protection or increase of a common fund, or common property, or who has created at his own expense, or brought into court, a fund in which others may share with him.** [Emphasis added.]

*Kellough v. Taylor*, 1941 OK 320, ¶4, 119 P.2d 556.

8. Under the Common Fund Doctrine, and in particular in a “class action” (which is one type of action that can create a common fund), the Court has the authority to extend contingency fee agreements entered into between the Class Representative and Class Counsel to the entire Class.

Contingent fee agreements may be appropriate in class action cases. . . . Many courts have held . . . that once a class is certified and a decision on the merits is had, the trial court may decide whether to approve the contingent fee agreement, and whether to extend the contingent arrangement to all class members.

*Sholer v. State of Oklahoma*, 1999 OK CIV APP 100, ¶¶ 13-14, 990 P.2d 294.

9. This Court recognizes the importance of contingency fees in our justice system, and in particular in class actions.

Although contingent fee contracts are subject to restrictions . . . such agreements have generally been enforced unless the contract is unreasonable. **Often contingent fee agreements are the only means possible for litigants to receive legal services ---- contingent fees are still the poor man's key to the courthouse door. The contingent fee system allows persons who could not otherwise afford to assert their claims to have their day in Court.** [Emphasis added. Footnotes omitted.]

*Sneed v. Sneed*, 1984 OK 22, ¶3, 681 P.2d 754.

10. A review of other District Court Orders in similar common fund cases reveals similar sound logic. For example, in *Bridenstine v. Kaiser-Francis, et al.*, Case No. CJ-2000-1, District Court of Texas County, Oklahoma, ¶3, the Honorable Ronald Kincannon explained his rationale for using the percentage of fund method for determining the appropriate attorney’s fee.

The percentage fee has important advantages to the Class in that it provides self-regulating incentives for efficiency. First, it compensates counsel on the real value of the services provided (the amount of benefit conferred). Second, the percentage approach awards efficiency. Not only is there no reward for inefficiency, there is a penalty due to the fact that, if the work is unnecessary,

the lawyer has wasted his time. Third, the percentage method encourages counsel to go the extra mile. Counsel has an incentive to push beyond a "good" recovery to an "excellent" recovery. The Court certainly considers the existing Common Fund to be an excellent recovery to the Class Members. Thus, under this percentage approach, the interests of the Class and Class Counsel are consistent and aligned.

11. In *Brumley v. ConocoPhillips*, Case No. CJ-2001-5, District Court of Texas County, Oklahoma, at p. 15, Judge Zigler stated as follows:

To award Class Counsel a lesser percentage of the Total Common Fund because the efforts of Class Counsel have created an exceptionally large Fund would amount to penalizing Class Counsel for their success which the Court is unwilling to do. This Court makes no myth as to Class Counsel's attorney fee award herein. It is significant. Yet, it is reasonable and proper. It is fair and equitable. Additionally, the common sense reality is, when the efforts of Class Counsel create an exceptionally large Total Common Fund for the benefit of the Class and if Class Counsel's fees awarded therefrom are greatly restricted, then foreseeably [sic] so goes later access to the Courthouse for other potential and future class members. From that common sense viewpoint and understanding it is all a matter of economics. So in conclusion, as in the many other class cases referenced herein, under this percentage approach as thoroughly addressed hereinabove, the interests of the Class and Class Counsel will be consistent and aligned.

\* \* \*

Knowing the rewards for Class Counsel can be great, so travels the path of loss for Class Counsel if defeat is the end result. Financial, personal, and emotional devastation are the potential events for a very few members of this Profession willing and able to represent thousands of strangers in order to obtain monetary benefit for those strangers that otherwise, without question, is unattainable through known legal means. From this aspect, the potential rewards of a Class Counsel's success and the potential devastation realized of a Class Counsel's defeat must be considered with [an] open judicial mind.

12. The Court finds the 40% contingency fee percentage contained in the agreement between Class Counsel and the Class Representative to be within the typical range of contingency fee percentages for oil and gas class action litigation approved in this state. The Court finds: (a) that the 40% contingency fee agreement between Class Counsel and the Class Representative is fair and reasonable and should be, and is hereby, approved and extended to the members of the Class, and (b) that based on the foregoing factors and reasoning, as well as the additional analysis described below, an attorney fee award in the amount of 40% of the Gross Settlement Proceeds, together with accrued interest thereon, is a fair and reasonable amount of compensation to Class Counsel for establishing the Common Fund.

13. In class actions such as this, the percentage fee or contingency fee has important advantages to the Class in that it provides self-regulating incentives for efficiency. First, it compensates counsel on the real value of the services provided (the amount of benefit conferred). Second, the percentage approach rewards efficiency. Not only is there no reward for inefficiency, there is a penalty due to the fact that, if the work is unnecessary, the lawyer has wasted his time. Third, the percentage method encourages counsel to go the extra mile. Counsel has an incentive to push beyond a "good" recovery to an "excellent" recovery. The Court certainly considers the existing Common Fund to be an excellent recovery to the Class Members. Thus, under this percentage approach, the interests of the Class and Class Counsel are consistent and aligned.

14. The Court has considered the basic guidelines established in *State ex rel. Burk v. City of Oklahoma City*, 1979 OK 115, 598 P.2d 659<sup>6</sup>, and also the additional factors from the *Manuel for Complex Litigation*. In *Burk*, the Supreme Court enunciated twelve factors to be

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<sup>6</sup> The Court recognizes that *Burk* was not a class action and that the equitable fund created by the attorneys' effort benefited only the City of Oklahoma City. The attorneys' fee awarded in that case amounted to 100% of the equitable fund currently available and all of the benefit due the City for several years into the future.



considered by the District Court in fixing fees under the lodestar approach. These factors, evaluated below, confirm that the requested forty percent (40%) attorney fee from the common fund is reasonable.

- 1) Time and labor required. Counsel has made substantial time and labor commitments which have now inured to the financial benefit of the Plaintiff Class.
- 2) The novelty and difficulty of the question. The issues, both at the certification phase and on the merits themselves, were exceptionally difficult and vigorously contested. The oil and gas accounting issues involved in this case have proved to be very complex. Without question the issues in the litigation were novel, complex and difficult.
- 3) The skill requisite to perform the legal services properly. The unique nature of this case, coupled with the issues, mandated that the Class be represented by skilled counsel. To prosecute these claims against several large corporate defendants represented by highly capable defense counsel with extensive resources necessitated assembling a team of Class Counsel skilled in oil and gas litigation, as well as details of complex litigation. Counsel's qualifications, skills and experience are well known throughout the oil and gas legal community. Class Counsel are certainly highly skilled and capable counsel.
- 4) The preclusion of other employment. Class Counsel are engaged in the on-going practice of law. Had Class Counsel not committed their resources to this case, Class Counsel could have accepted other matters, but did not. The prosecution of this case has very substantially reduced Class Counsels' opportunity for employment in other matters. Class Counsel are either solo practitioners or members of small firms. The prosecution of this case has substantially reduced Class Counsels' opportunity for employment in other cases.
- 5) The customary fee. These types of cases (oil and gas class action cases) are handled on a contingent fee basis. As indicated above, the fee percentage in these types of cases is typically 40% of the gross fund.
- 6) Whether the fee is fixed or contingent. Class Counsel entered into a contingency fee agreement with the Class Representative as discussed above. Class Counsel have represented the Class with vigor and without compensation of any kind and have advanced hundreds of thousands of dollars of litigation expenses out of their own pockets.



- 7) Time limitations imposed by client or circumstances. Numerous time limitations were imposed on Class Counsel throughout the course of the proceedings. This Court and the appellate courts imposed time limitations through case scheduling over the past several years that forced Class Counsel to perform services of great magnitude by certain dates. The schedules of the courts, witnesses and clients were also accommodated on a regular basis by Class Counsel. A case of the size and complexity existing here required the commitment of a large percentage of the total time and resources of the firms of Class Counsel and worked significant hardships on them over the course of this case. The circumstances of the case required the litigation to be vigorously pursued if an excellent recovery through settlement was to be achieved. Class Counsel, in fact, did vigorously prosecute the case and obtained excellent results for the Class.
- 8) The amount involved and the results obtained. There can be no doubt that, at the outset, Class Counsel had no assurance of any recovery. Considering all involved, the amount and terms of the settlement reflect the quality of the result and the outstanding benefits provided by Class Counsel to the Class. The Court considers this settlement to be an excellent result for the Class.
- 9) Experience, reputation and ability of counsel. Class Counsels' qualifications, skill, experience, ability and reputation are well known throughout the oil and gas and complex litigation legal communities. Class Counsel are exceptional litigators.
- 10) The undesirability of the case. Compared to most civil, contingent litigation attracting counsel to represent plaintiffs, this litigation clearly fits the initially "undesirable" test. Litigation of this nature is extremely risky, expensive and stressful and takes years of effort and energy. Not many law firms would be willing, or able, to risk investing the time and expenses necessary to prosecute this litigation. The Defendant was well-financed, and well represented. Certainly, the possibility of a recovery was a risky matter.
- 11) Nature and length of the professional relationship with the client. Class Counsel have various long-term relationships with various Class members. There is always significant risk to a client who participates as a plaintiff in a large lawsuit, in terms of the client's reputation, future business dealings, liability for costs, and other potentially adverse considerations.
- 12) Awards in similar cases. This is one of the most critical factors. However, the discussions in both *Newberg* and the *Manuel for Complex Litigation* give this court better guidance on how to evaluate this factor. Thus, this

Court incorporates said discussion set out below herein by reference in finding that the requested 40% fee is customary in these types of cases. The awards in similar cases were discussed in detail in Class Counsel's Motion, exhibits and testimony, all of which are incorporated herein by reference. The Court finds a 40% fee is customary in these types of cases.

- 13) Multiplier as an additional factor. In 1980, the Oklahoma Supreme Court followed and modified *Burk, supra*, to further instruct District Courts that counsel fees cannot be fairly awarded on the basis of time alone, but other factors, particularly the litigation risk factor, must be considered.

15. The general agreement in all jurisdictions is that the time and labor spent by the attorney in performing services for which compensation is sought is a factor to be considered in setting a reasonable fee. However, it is also commonly agreed that the time element must be considered in connection with other factors. Fees cannot fairly be awarded on the basis of time alone. The use of time as the sole criterion is of dubious value because economy of time could cease to be a virtue; and inexperience, inefficiency, and incompetence may be rewarded to the detriment of expeditious disposition of litigation. The litigation risk factor must be considered. Hourly rates must be adjusted where compensation is contingent, by assessing the likelihood of success at the outset of the representation. See *Oliver's Sportcenter, Inc. vs. National Standard Ins. Co.*, 1980 OK 120, 615 P.2d 291.

16. In the authorities noted herein, this amounts to a cross-check via the lodestar method. Once the amount of reasonable hourly billing has been determined, the court generally uses this as a cross-check to determine whether the percentage recovery from the common fund is reasonable. Here one must multiply approximately 3.2 times the billed amount to equal the forty percent (40%) recovery that is requested.<sup>7</sup> The Court finds that Class Counsel expended in excess of 10,000 hours for the benefit of the Class. The Court finds that the hourly rates of Class

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<sup>7</sup> *Newberg on Class Actions*, Fourth Edition, indicates that multipliers of one to four are frequently awarded in common fund cases, but these may be larger in "large common fund" cases. § 14.6, footnote 87 indicates that multipliers from 5 to 10 have been used.

Counsel are reasonable and within the acceptable range in the legal community for this type of legal services. Based upon the authority presented by Class Counsel, the multiplier of 3.2 awarded herein is consistent with (if not below) the multipliers approved in other class action cases with similar procedural postures.

17. In light of the additional factors from *the Manuel for Complex Litigation*, the Court is of the opinion that Class Counsels' fee request is fair and reasonable.

- a. *The size of the fund and the number of persons who actually receive monetary benefits:* The Class comprises over a thousand members. Clearly this is a significant fund, \$25,000,000. As indicated above, the settlement represents an excellent recovery.
- b. *Any agreements or understandings, including side agreements, between attorneys and their clients or other counsel involved in the litigation:* This is the contingency agreement as to attorneys' fees between Class Counsel and class representative noted above.
- c. *Any substantial objections to the settlement terms or fees requested by counsel for the class by class members (it is, however, a court's duty to scrutinize applications for fees, independently of any objection . . .):* There were no objections to the fairness of the settlement. Without any credible evidence being presented to the contrary, the Court finds that all evidence presented supports the request of the Class Representative and Class Counsel for the award of their requested fees and expenses.
- d. *The skill and efficiency of the attorneys; (Newberg, states this together with e, below, as "the amount of the benefit conferred upon the Class that could properly be*

*attributed to Class Counsel*<sup>8</sup>): As noted above it is clear that this result could not have been reached except for the skill, tenacity, and insight of Class Counsel into both the merits of this litigation, and what was a reasonable damage amount. It is also clear that without Class Counsel, that the class would likely not have benefited. First, until this action was filed these matters had not been litigated by the class members as this is the only litigation pending against the Defendants for the claims being released under the Settlement. Thus, the class members elected not to take the risks of litigating for these many years. It is very unlikely that the class would have received any return aside from this lawsuit. The only way that the settlement became possible was via Class Counsel doing tremendous amounts of discovery, both of the merits – so that all were well aware of the strengths of their case, and of the damages – so that the amounts of loss could be accurately determined. This, again, was due to the skill and tenacity of Class counsel. In summation, Class Counsel has conferred great benefits on this class for which they otherwise would have received nothing.

- e. The complexity and duration of the litigation:* I will not reiterate these findings as they were made already above, but this was very difficult and complex litigation.
- f. The risks of nonrecovery and nonpayment:* Prior to settlement, the risks of nonrecovery, as noted above, were great.
- g. The amount of time reasonably devoted to the case by counsel; even where fees are to be awarded on a percentage-of-fund basis, some judges cross-check the percentage by conducting a modified lodestar analysis:* The multiplier of 3.2 is well within

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<sup>8</sup> *Newberg on Class Actions*, Fourth Edition, § 14.7, p. 582.

the acceptable range of multipliers awarded in other similar class actions<sup>9</sup>. I find that due both to the difficulties of this case and the excellent settlement, this is an acceptable multiplier for these particular facts. Class Counsel has devoted in excess of 10,000 hours prosecuting this case. While this is a lot of time, Class Counsel had to do a lot to prepare and they were not outworked by the large law firms representing the Defendants.

- h. *The awards in similar cases:* A contingent attorneys' fee of at least forty percent (40%) of the common fund is normative for this type of royalty owner class litigation. The table of cases listed by Class Counsel supports this conclusion and the same is incorporated herein and made a part hereof. Also compelling is the recent decision of *Velma-Alma Ind. School Dist. No. 15 v. Texaco, Inc.*, 2007 Ok CIV APP 42, 162 P.3d 238, wherein the Court affirmed the trial court's order approving an award of attorney fees equal to forty percent (40%) of the common fund in a royalty owner class settlement.

To reach a decision in this case, the authorities indicate that this amount must be determined ultimately by the specific facts of this case. These findings have generally been made via the *Burk* factors, and this court's findings on the factors within the *Manuel for Complex Litigation*.

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<sup>9</sup> In appropriate cases where Class Counsel has created a large common fund, such as in the present case, multipliers of 5 to 10 have been awarded. See, *Herbert Newberg, Newberg on Class Actions (3<sup>rd</sup>)*, § 14.03 (emphasis added): Courts applying the lodestar approach will often use large multipliers or monetary enhancements of the time/rate (lodestar) calculation in order to reach fee award results comparable to percentage of recovery fees. **Multipliers ranging from one to four frequently are awarded in common fund cases when the lodestar method is applied. A large common fund award way warrant an even larger multiple.** See e.g., *In re Beverly Hills Fire Litig*, 639 F. Supp. 915 (ED Ky 1986) (**multiplier of 5 for lead counsel**); *Wilson v. Bank of Am Natl Trust & Savs Assn*, No. 643872 (Cal Sup Ct Aug 16, 1982) (**multiplier of up to 10 times** the hourly rate).

18. This litigation was quite complex and difficult, and class counsel had engaged in significant discovery and work in preparing a damage model which, absent the settlement, would have been presented at trial. Secondly, the settlement reached was clearly quite advantageous for each of the class members even after the requested attorneys' fees are removed. Thirdly, the Class has not objected to the request for attorneys' fee. Fourthly, Class Counsel clearly has taken great risks, and exercised considerable skill and tenacity over an extended length of time to achieve this result. Finally, as noted by Class Counsels' experts, the forty percent (40%) figure is reasonable and normal for this type of litigation – especially in light of the other factors listed herein. For all of these reasons, it appears that the attorneys' fee request of forty percent (40%) is reasonable, especially for this set of facts.

19. Knowing the rewards for Class Counsel can be great, so travels the path of loss for Class Counsel if defeat is the end result. Financial, personal, and emotional devastation are the potential events for a very few members of this profession willing and able to represent thousands of strangers in order to obtain monetary benefit for those strangers that otherwise, without question, is unattainable. From this aspect, the potential rewards of Class Counsels' success and the potential devastation realized of a Class Counsels' defeat must be considered with open judicial mind.

20. The Court in this case certainly considers the Total Common Fund to be an excellent recovery to the Class. To award Class Counsel a lesser percentage of the Total Common Fund because the efforts of Class Counsel have created an exceptionally large Fund would amount to penalizing Class Counsel for their success which the Court is unwilling to do. The Court will not reduce Class Counsel's percentage of fees from the common fund because of

the remarkable success they achieved. Additionally, the common sense reality is, when the efforts of Class Counsel create an exceptionally large Total Common Fund for the benefit of the Class and if Class Counsels' fees awarded therefore are greatly restricted, the foreseeable so goes later access to the Courthouse for other potential and future class members.

21. The Court is satisfied that the most important determinant of the attorneys' fee award is the amount of the client recovery and that the lodestar/multiplier analysis is best used to check that the percentage of the fund award is in line with what a reasonable fee should be. Based upon the Court's analysis of all of the factors above-listed, the Court finds a reasonable fee in this case to be forty percent (40%) of the settlement fund (or \$10,000,000.00), plus accrued interest thereon pursuant to the settlement agreement, is reasonable in this particular case.

**Expert Witness Fees, Litigation Expenses and Class Representatives Fee:**

22. The Court, having reviewed the accounting records which detail the expert witness fees and litigation expenses incurred in pursuit of class claims, and having heard testimony of Class Counsel regarding the necessity of such expenditures in preparation of the case, finds that reasonable expert witness fees and litigation expenses were incurred in the amount of \$325,000.<sup>10</sup>

23. The Court finds that the Class Representative has made substantial time and labor commitments to the Class, and has incurred both legal and financial risks while pursuing this case on behalf of the Class, all of which resulted in obtaining an excellent benefit for the Class<sup>11</sup>.

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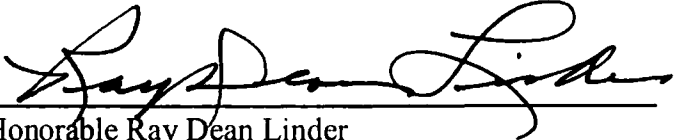
<sup>10</sup> It is apparent that the litigation costs and expenses advanced by Class Counsel will exceed this figure; however, they have limited their reimbursement request to this amount.

<sup>11</sup> Mr. Sackett personally participated in this litigation, attended most every hearing (including the lengthy class certification hearing), provided two depositions, attended both mediations, worked closely with class counsel, responded to numerous discovery requests, and bore the risks associated with participating in litigation of this nature.

The granting of a Class Representative fee is based upon the same equitable considerations discussed above which related to a party's efforts in the creation of a common fund for the mutual benefit of a class. 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. In this action, Class Counsel has recommended and requested a Class Representative's fee of .7% of the Settlement Fund. The Court finds that compensation to the Class Representative in the amount of .7% of the Settlement Fund is fair and reasonable compensation for the Class Representative's services to the Class.

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** that (1) Class Counsel are awarded attorney fees in the amount of 40% of the Common Fund (\$10,000,000) plus 40% of accrued interest to the date of distribution pursuant to the Settlement Agreement; (2) Class Counsel are awarded reimbursement of litigation expenses in the amount of \$325,000; and (3) the Class Representative is awarded fees in the amount of 0.7% (\$175,000.00) of the Settlement Fund plus 0.7% of accrued interest to the date of distribution pursuant to the Settlement Agreement.

IT IS SO ORDERED this 5th day of March, 2009

  
\_\_\_\_\_  
Honorable Ray Dean Linder  
District Judge





IN THE DISTRICT COURT OF GARFIELD COUNTY  
STATE OF OKLAHOMA

CONTINENTAL RESOURCES, INC., and )  
BUFFALO ROYALTY CORPORATION, )

Plaintiffs, )

and )

FARRAR OIL COMPANY, )

Plaintiff, Intervenor, )

v. )

CONOCO INC., and )  
E.I. DUPONT DeNEMOURS & COMPANY, )

Defendants. )

**CONSOLIDATED WITH**

FARRAR OIL COMPANY, )

Plaintiff, )

vs. )

CONOCO INC. and E.I. DUPONT )  
DeNEMOURS & CO., )

Defendants. )

FILED  
GARFIELD COUNTY, OKLA.

AUG 22 2005  
SHARON MEL ROSE  
COURT CLERK  
BY *[Signature]*  
DEPUTY COURT CLERK

Case No. CJ-95-739

Case No. CJ-2000-356

**ORDER ON MOTION FOR ATTORNEY FEES, LITIGATION  
EXPENSES, AND CLASS REPRESENTATIVES FEE**

This matter came on for hearing on the 17<sup>th</sup> day of August, 2005, on Class Representatives' and Class Counsel's motion for attorney fees, litigation expenses and Class Representatives fee. All named parties were present and represented by counsel. Also appearing were Robert Bishop, Stuart Yoes, and Michael Bigheart,, all three as attorneys for the sole

objector to the motion, Diane Mason (“Ms. Mason”). After reviewing the motion and all related pleadings, having reviewed the evidence submitted, having heard the testimony and arguments presented, being fully advised in the premises, and having announced its ruling in open court on the 17<sup>th</sup> day of August, 2005, **THE COURT FINDS AND ORDERS AS FOLLOWS:**

**Notice and Objections:**

1. Notice of this hearing was properly mailed by ConocoPhillips to the Putative Class Members with known valid mailing addresses and was published as required by this Court’s previous order (*see* Report concerning notice previously filed with the Court).

The Notice provided:

Class Counsel has requested that the Court award Class Counsel an attorney’s fee of 40% of the Settlement Proceeds; award the Class Representatives a combined fee of \$115,000.00 to be divided among them; and award reimbursement to Class Counsel for expert and consulting fees and litigation expenses actually incurred in an amount not to exceed \$500,000.00. If the Court approves these requests for fees and expenses, said amounts will be deducted from the Settlement Proceeds before distribution to the Class. In addition, the Settlement Agreement requires certain costs of notice, printing and mailing associated with the implementation of the terms of the Settlement Agreement be paid by and deducted from the Settlement Proceeds prior to any other disposition of the proceeds.

\* \* \*

You May Remain a Member of the Settlement Class, but Object to the Proposed Class Settlement or to Class Counsel’s Request for Attorney’s Fees, Class Representatives’ Award, Expert and Consulting Expenses and other Litigation Expenses.

Only a person or entity who remains a member of the Settlement Class shall have the right to object to the proposed settlement with ConocoPhillips and/or the requested fees and expenses as set forth above. Persons who desire to object to the Settlement or the fees and expenses must file a written statement with the Garfield County Court Clerk, P.O. Box 1664 Enid, Oklahoma 73942-1081, and provide a copy of same to Class

Counsel, Allan DeVore, 1318 N. Robinson, Oklahoma City, OK 73102, and counsel for ConocoPhillips, Gary Davis, Crowe and Dunlevy, 20 North Broadway, Suite 1800, Oklahoma City, Oklahoma 73102, on or before August 1, 2005. The written statement must contain:

- (1) A heading referring to Case Nos. CJ-95-739 and CJ-2000-356 and to the District Court of Garfield County, Oklahoma;
- (2) A statement as to whether the objector intends to appear at the Settlement Fairness Hearing, either in person or through counsel, and, if through counsel, identifying counsel by name, address and telephone number;
- (3) A detailed statement of the specific legal and factual basis for each and every objection;
- (4) A list of any witnesses the objector may call at the Settlement Fairness Hearing, together with a brief summary of each witness's expected testimony;
- (5) A list of and copies of any exhibits which the objector may seek to use at the Settlement Fairness Hearing;
- (6) A list of any legal authority the objector may present at the Settlement Fairness Hearing;
- (7) The objector's current address;
- (8) The objector's current telephone number;
- (9) The objector's signature executed before a Notary Public; and,
- (10) Identification of the objector's interest in Class Wells by identifying each Class Well (by Well name, ConocoPhillips well number, Section, Township and Range).

The Court previously approved such notice and now finds that the notice to the Class of this hearing is proper and sufficient under 12 Okla. Stat. § 2023 (E), the Due Process Clause of the United States Constitution and the Due Process Clause of the Oklahoma Constitution.

2. The Court notes that only one Putative Class Member, Ms. Mason, has filed an objection to the motion for attorney fees, litigation expenses and Class Representatives award. The Court notes that Ms. Mason's total estimated aggregate claim is \$16.33 (i.e., approximately 0.0000007 of the settlement fund) and her share of the requested fees and expenses would be \$6.73 (The Court notes that each Class Member will receive an approximate 22% increase in their net distribution over their claim amount as a result of

the Putative Class Members who opted out of the Class Settlement.) Although the Court has considered the objection of Ms. Mason, filed by, and presented to the Court by her attorneys, the Court finds that such objection is without merit and that the participation by Ms. Mason, or Ms. Mason's attorneys, in this case neither aided the Court in its determination of the proper fees and expenses to be awarded nor in any way was a benefit to the Class or added any value to the Common Fund.

The Settlement Agreement approved by the Court, provides that "[i]ndividual objections to the award of Class Fees and Expenses by a Settlement Class Member will be severed for separate review and will not affect the distribution to other Settlement Class Members of their share of the Settlement Fund." Settlement Agreement, ¶5.5. Furthermore, the Notice to the Class approved by the Court provided that "[i]f the Court determines that the settlement and the awards of fees and expenses are fair to the Settlement Class as a whole, individual objections may be severed for separate review." Therefore, the Court finds that Ms. Mason's objection to the award of fees and expenses is hereby severed for possible separate appellate review and any appeal of this order by Ms. Mason will not affect the distribution to other Settlement Class Members of their share of the Settlement Fund

**Class Counsel's Attorney Fees:**

3. Class Counsel have made substantial time and labor commitments which have now inured to the financial benefit of the Plaintiff Class and which have resulted in the creation of a Common Fund of \$23,000,000.00, plus accrued interest.<sup>1</sup>

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<sup>1</sup> The Common Fund Doctrine is well recognized by the Oklahoma Supreme Court (as well as the United States Supreme Court). If the plaintiff and/or his counsel have **created, preserved, protected, or increased a common fund (or common property), or have brought into court**, a fund in which others may share with him, a court, in

4. Under the Common Fund Doctrine, and in particular in a "class action" (which is one type of action that can create a common fund), the Court has the authority to extend contingency fee agreements entered into between the Class Representative and Class Counsel to the entire Class.

**Contingent fee agreements may be appropriate in class action cases. . . . Many courts have held . . . that once a class is certified and a decision on the merits is had, the trial court may decide whether to approve the contingent fee agreement, and whether to extend the contingent arrangement to all class members. [Emphasis added.]**

*Sholer v. State of Oklahoma*, 1999 OK CIV APP 100, ¶¶ 13-14, 990 P.2d 294.

5. The Court finds that Class Counsel and the Class Representatives entered into contingency fee agreements whereby Class Counsel agreed to prosecute this action in exchange for receiving of fee of 40% of the gross recovery for the Class. The Court further recognizes the importance of contingency fees in our justice system, and in particular in class actions.

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the exercise of equitable jurisdiction, may order the allowance of attorney fees and litigation expenses to counsel.

**The conceptual underpinnings for the chancery common-fund doctrine teach us that an equitable charge may be impressed in favor of its creator *when the fund is within the direct control of the court.* The "pre-existing fund" must be immediately subject to counsel-fee assessment, and the benefits conferred have to be traceable with some accuracy to each beneficiary. [Footnotes and citations omitted. Emphasis added.]**

*Oklahoma Tax Com'n v. Ricks* 1994 OK 115, ¶7-8, 885 P.2d 1336.

It is well settled that ordinarily "a court in the exercise of equitable jurisdiction, will, in its discretion, order an allowance of counsel fees, or, as it is sometimes said, allow costs as between solicitor and client, to a complainant (and sometimes directly to the attorney) who at his own expense has maintained a successful suit for the **preservation, protection, or increase of a common fund, or of common property, or who has created at his own expense, or brought into court, a fund in which others may share with him.**" [Citations omitted. Emphasis added.]

*State ex rel. Board of Com'rs of Harmon Co. v. OTC*, 1944 OK 250, ¶4 151 P.2d 797; *see also, Kellough v. Taylor*, 1941 OK 320, 119 P.2d 556.

Although contingent fee contracts are subject to restrictions . . . such agreements have generally been enforced unless the contract is unreasonable. **Often contingent fee agreements are the only means possible for litigants to receive legal services ---- contingent fees are still the poor man's key to the courthouse door. The contingent fee system allows persons who could not otherwise afford to assert their claims to have their day in Court.** [Emphasis added. Footnotes omitted.]

*Sneed v. Sneed*, 1984 OK 22, ¶3, 681 P.2d 754.

6. In class actions, the percentage fee or contingency fee has important advantages to the Class in that it provides self-regulating incentives for efficiency. First, it compensates counsel on the real value of the services provided (the amount of benefit conferred). Second, the percentage approach awards efficiency. Not only is there no reward for inefficiency, there is a penalty due to the fact that, if the work is unnecessary, the lawyer has wasted his time. Third, the percentage method encourages counsel to go the extra mile. Counsel has an incentive to push beyond a "good" recovery to an "excellent" recovery. The Court certainly considers the existing Common Fund to be an excellent recovery to the Class Members. Thus, under this percentage approach, the interests of the Class and Class Counsel are consistent and aligned.
7. The Court finds that the 40% contingency fee percentage contained in the agreement between Class Counsel and the Class Representatives is within the typical range of contingency fee percentages for oil and gas class action litigation approved in this State.
8. The Court finds: (a) that the 40% contingency fee agreement between Class Counsel and the Class Representatives is fair and reasonable and should be, and is hereby, approved and extended to the members of the Class and (b) that based upon the additional analysis described below, an attorney fee award of 40% of the Settlement Proceeds (as defined in

Compromise and Settlement Agreement), together with accrued interest thereon, is a fair and reasonable amount of compensation to Class Counsel for establishing the Common Fund.

9. The Court considered the basic guidelines established by the Oklahoma Supreme Court set forth in *State ex rel. Burk v. City of Oklahoma City*, 1979 OK 115, 598 P.2d 659.<sup>2</sup>
10. The Court has reviewed the detailed time records submitted by Class Counsel and finds that the time reflected in the record (in excess of 7512 hours) was reasonably expended for the benefit of the Class. The Court has also reviewed the hourly rates of Class Counsel as set forth in the record and finds them to be reasonable and within the acceptable range in the legal community for this type of legal services. Thus, the Court further finds the base hourly fees (hours X rates), prior to consideration of the enhancement factors under a “lodestar” approach, in this case to be in excess of \$2,521,000.00. (The Court notes, however, that Class Counsel has expended substantial additional time during July and August of 2005, after the time frame of the itemized billing schedule, and will be expending substantial time monitoring the distribution of the Settlement Fund, thus substantially increasing the base hourly fees.)
11. In *Burk*, the Supreme Court enunciated twelve factors to be considered by the District Court in fixing fees under the lodestar approach.
  - A. Time and labor required. Counsel have made substantial time and labor commitments which have now inured to the financial benefit of the Plaintiff Class.

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<sup>2</sup> The Court recognizes that *Burk* was not a class action and that the equitable fund created by the attorneys’ effort benefited only the City of Oklahoma City. The attorneys’ fee awarded in that case amounted to 100% of the equitable fund currently available and all of the benefit due the City for several years into the future.



- B. The novelty and difficulty of the question. Class certification questions are known to be vigorously contested. Furthermore, the oil and gas accounting issues involved in this case are also very complex.
- C. The skill requisite to perform the legal services properly. The unique nature of this case, coupled with the issues, mandated that the Class be represented by highly skilled counsel. To prosecute these claims against a large corporate defendant represented by highly capable defense counsel with extensive resources necessitated assembling a team of Class Counsel skilled in oil and gas litigation, as well as details of complex litigation. Counsels' qualifications, skills and experience are well known throughout the oil and gas legal community. Class Counsel are certainly highly skilled and capable counsel.
- D. The preclusion of other employment. Class Counsel are engaged in the on-going practice of law. Had Class Counsel not committed their resources to this case, Class Counsel could have accepted other matters, but did not. The prosecution of this case has very substantially reduced the Class Counsel's opportunity for employment in other matters.
- E. The customary fee. These types of cases (oil and gas class action cases, are handled on a contingent fee.) The fee percentage in these types of cases is typically 40% of the gross fund.
- F. Whether the fee is fixed or contingent. Class Counsel entered into contingency fee agreements with the Class Representatives that provides for attorneys' fee of 40% of the gross consideration received as discussed in detail above. Counsel for the Class have represented the Class with vigor and without prior compensation of any kind for their time.
- G. Time limitations imposed by client or circumstances. Numerous time limitations were imposed on Class Counsel throughout the course of the proceedings, beginning with time constraints imposed by statute for the filing of a case for punitive damages before the new statute restricting the amount of such damages went into effect the day following the filing of the case. Many subsequent time constraints were imposed on Class Counsel. This Court and the appellate courts imposed time limitations through case scheduling over the last ten years that forced Class Counsel to perform services of great magnitude by certain dates. The schedules of the courts, witnesses and clients were also accommodated on a regular basis by Class Counsel. A case of the size and complexity existing here required the commitment of a large percentage of the total time and resources of the firms of Class Counsel and worked significant hardships on them over the course of a decade or more. The circumstances of the case required the litigation to be vigorously pursued if an excellent



recovery through settlement was to be achieved. Class Counsel, in fact, did vigorously prosecute the case and obtained excellent results for the Class.

- H. The amount involved and the results obtained. There can be no doubt that at the outset, Plaintiffs' Counsel had no assurance of any recovery. When the Continental Resources Class Action was filed, there had never been another class action case based on similar facts anywhere in the country to the Court's knowledge. Considering all involved, the amount and terms of the settlement reflect the quality of the result and the outstanding benefits provided by Class Counsel to the Class. The Court considers this settlement to be an excellent result for the Class.
- I. Experience, reputation and ability of counsel. Class Counsel's qualifications, skill, experience, ability and reputation are well known throughout the oil and gas and complex litigation legal communities. Class Counsel are exceptional litigators.
- J. The undesirability of the case. Compared to most civil, contingent litigation attracting counsel to represent plaintiffs, this litigation clearly fits the initially "undesirable" test. Not many law firms would be willing, or able, to risk investing the time and expenses necessary to prosecute this litigation. The Defendants were well-financed, and well represented. Certainly, the possibility of a recovery was a risky matter.
- K. Nature and length of the professional relationship with the client. Class Counsel have various long-term relationships with various Class Members.
- L. Awards in similar cases. The awards in similar cases were discussed in detail in Class Counsel's motion, exhibits and testimony. The Court incorporates said discussion herein by reference. The Court finds that a 40% fee is customary in these types of cases.

12. In 1980, the Oklahoma Supreme Court followed and modified *Burk, supra*, to further instruct District Courts that counsel fees cannot be fairly awarded on the basis of time alone, but other factors, particularly the litigation risk factor, must be considered. See *Oliver's Sportcenter, Inc. vs. National Standard Ins. Co.*, 1980 OK 120, 615 P.2d 291.

13. Based upon the Court's analysis of the *Burk* factors, the Court finds a reasonable fee in this case to be \$9,200,000.00, plus accrued interest thereon (which represents 40% of the Settlement Proceeds, and a total multiplier of the base hourly fees of approximately 3.6 under a lodestar approach which is well within the range of reasonableness).<sup>3</sup>

IT IS THEREFORE ORDERED that Class Counsel be, and hereby are, awarded an attorney fee of 40% of the Settlement Proceeds, plus accrued interest thereon.

**Expert Witness Fees, Litigation Expenses and Class Representatives Fee:**

1. The Court, having reviewed the accounting records which detail the expert witness fees and litigation expenses incurred in pursuit of class claims, and having heard testimony of Class Counsel regarding the necessity of such expenditures in preparation of the case, finds that reasonable expert witness fees and litigation expenses were incurred in the amount of \$170,780.59.
2. The Court finds the Class Representatives have made substantial time and labor commitments to the Class, and have incurred serious legal and financial risks while pursuing this case on behalf of the Class, all of which resulted in obtaining an excellent

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<sup>3</sup> In appropriate cases where Class Counsel have created a large common fund, such as in the present case, multipliers of even 5 to 10 have been awarded. See, *Herbert Newberg, Newberg on Class Actions* (3<sup>rd</sup>), § 14.03 (emphasis added):

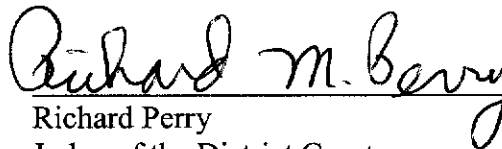
Courts applying the lodestar approach will often use large multipliers or monetary enhancements of the time/rate (lodestar) calculation in order to reach fee award results comparable to percentage of recovery fees. **Multiples ranging from one to four frequently are awarded in common fund cases when the lodestar method is applied. A large common fund award may warrant an even larger multiple.**<sup>21</sup>

[Fn. 21] See e.g., *In re Beverly Hills Fire Litig*, 639 F. Supp. 915 (ED Ky 1986) (personal injury class action; **multiplier of 5 for lead counsel for contingency and superior trial skill**); *Wilson v. Bank of Am Natl Trust & Savs Assn*, No. 643872 (Cal Sup Ct Aug 16, 1982) (illegal use of escrow funds by lender for profit; noncontingent hourly rates of up to \$150/hour and a **multiplier of up to 10 times** the hourly rate). [End of Fn. 21]

benefit for the Class. The granting of a Class Representative fee is based upon the same equitable considerations discussed above with related to a party's efforts in the creation of a common fund for the mutual benefit of a class. 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. In this action, Class Counsel has recommended and requested a Class Representatives' fee of \$115,000.00 (one-half of one percent (0.5 %) of the Settlement Proceeds). The Court finds that compensation to the Class Representatives in the amount of \$115,000.00 (to be divided among the three Class Representatives) is fair and reasonable compensation for their services to the Class.

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** that (1) Class Counsel are awarded attorney fees in the amount of 40% of the Common Fund (i.e., \$9,200,000.00 plus accrued and accruing interest thereon); (2) Class Counsel are awarded reimbursement of litigation expenses in the amount of \$170,780.59; and (3) Class Representatives are awarded fees in the amount of \$115,000.00.

IT IS SO ORDERED this 22nd day of August, 2005.

  
Richard Perry  
Judge of the District Court

**CERTIFICATE OF MAILING**

This is to certify that on the 22<sup>nd</sup> day of August, 2005, a true and correct file-stamped copy of the above and foregoing *Order on Motion for Attorney Fees, Litigation Expenses and Class Representatives Fee* was mailed, postage prepaid, to:

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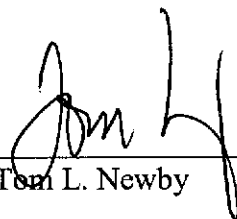
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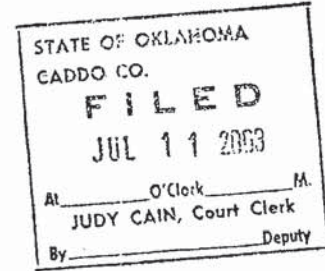
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\_\_\_\_\_  
Tom L. Newby

IN THE DISTRICT COURT OF CADDO COUNTY  
STATE OF OKLAHOMA

ALTHA M. ROBERTSON, INDIVIDUALLY AND AS )  
 TRUSTEE OF THE DONALD C. ROBERTSON )  
 FAMILY TRUST DATED JANUARY 4, 1994, AND )  
 TAYLOR MANAGEMENT, L.L.C. )  
 IN ITS OWN CAPACITY AND AS SURVIVING )  
 ENTITY OF THE TAYLOR ESTATES, AN )  
 OKLAHOMA PARTNERSHIP, )  
 )  
 FOR THEMSELVES AND ALL OTHERS )  
 SIMILARLY SITUATED, )  
 )  
 PLAINTIFFS, )  
 )  
 VS. )  
 )  
 SANGUINE, LTD., ET AL.; )  
 )  
 DEFENDANTS. )



CASE No. CJ-02-150

**ORDER ON CLASS COUNSELS' MOTION FOR ATTORNEYS' FEE,  
REPRESENTATIVES' FEE AND REIMBURSEMENT OF  
LITIGATION EXPENSES FROM THE COMMON FUND**

This matter comes on this 11<sup>TH</sup> day of July, 2003, on Class Counsels' Motions for Attorneys' Fee, Representatives' Fee and Reimbursement of Litigation Expenses from the Common Fund. All parties were present and represented by counsel.

After reviewing the motion and all related pleadings, having heard the testimony and arguments presented, and being fully advised in the premises, **THE COURT FINDS AND ORDERS AS FOLLOWS:**

1. Notice of this hearing, and Class Counsels' requested fees and costs, was properly mailed by Sanguine to Class Members with known valid mailing addresses and was published as required by this Court's previous order (*see* Sanguine's reports concerning notice previously filed with the Court).



The Notice provided:

Class Counsel has requested that the Court: 1) award Class Counsel an attorney's fee of 40% of the Settlement Proceeds, plus accrued interest; 2) award the Class Representatives a fee of 1% of the Settlement Proceeds, plus accrued interest; and 3) reimburse Class Counsel for litigation expenses not to exceed \$20,000. If the Court approves this request, said amounts will be deducted before distribution to the Class. Assuming the Court grants these requested fees and litigation expenses, the net distribution to the Class will be approx. \$7,797,900, which represents the equivalent net recovery to the Class Members of 100% of the deductions made from their royalties (approx. \$5,641,500) plus approx. \$2,566,400 in interest, totaling approx. 140% of the principal damage of the Class, not including the value of Sanguine's agreement not to make future Gathering and Marketing Fee charges.

If you object to the requested fees and expense reimbursement, you must file a written statement with the Court and provide a copy of same to Class Counsel at least ten (10) days prior to the Fairness Hearing containing the information set forth in Paragraph VII (B) below.

The Court previously approved such notice and now finds that the notice to the class of this hearing is proper and sufficient under 12 O.S. § 2023 (E) and the Due Process Clause of the United States Constitution.

2. This Court gave preliminary approval to these requested fees and expenses after the requests were announced to the Court by counsel and after the filing of the motion and supporting brief with the Court Clerk of Caddo County.

**Class Representatives' Fee:**

3. No objections were received as to the proposed 1% Class Representatives' fee. The requested 1% fee to the Class Representatives should be, and is hereby approved by the Court as a fair and reasonable compensation for their services to the Class.

**IT IS THEREFORE ORDERED** that on the date that this order becomes Final and Unappealable, as that term is defined in the Settlement Agreement, Sanguine shall wire transfer from the Settlement Distribution Account to Burns & Stowers, P.C.'s Client Trust Account (for further distribution by Class Counsel to the Class Representatives) 1% of balance of said Settlement Distribution Account on that date (plus estimated interest accrued on said amount to that date)<sup>1</sup> as a Class Representatives Fee.

**Litigation Expenses:**

4. No objections were received as to the proposed reimbursement of Litigation Expenses not to exceed \$20,000. Class Counsel has advised the Court that actual Litigation Expenses are slightly more than \$10,000. The requested reimbursement of \$10,000 in Litigation Expenses should be, and is hereby approved by the Court as fair and reasonably necessary expenses incurred for the benefit of the Class.

**IT IS THEREFORE ORDERED** that on the date this order becomes Final and Unappealable, as that term is defined in the Settlement Agreement, Sanguine shall wire transfer from the Settlement Distribution Account to Burns & Stowers, P.C.'s Client Trust Account (for further distribution to Class Counsel) \$10,000.00 as reimbursement of Litigation Expenses.

**Attorneys' Fee:**

5. The Court notes that total of fourteen objections, out of approximately 6,000 notices mailed out, were received related to the amount of the requested fees by Class Counsel (in other words, approximately 99.8% of the Class Members did not express an objection to the

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<sup>1</sup>Said amount will be \$132,506.06 plus 1% of the accrued interest on the Settlement Proceeds.

requested fees). The Court has reviewed and considered these objections as part of the Court's process of determining a reasonable attorneys' fee.

6. Class Counsel request an award of a 40% attorneys' fee from the gross settlement, which includes the accrued interest on said proceeds (hereinafter "Common Fund").<sup>2</sup> Therefore, Class Counsel seek an attorneys' fee of \$5,300,242.31 plus 40% of the accrued interest through the date this order becomes Final and Unappealable.
7. Class Counsel have made substantial time and labor commitments which have now inured to the financial benefit of the Plaintiff Class and have resulted in the Common Fund.
8. An attorneys' fee award of 40% of the Common Fund is a fair and reasonable amount of compensation to Class Counsel for establishing the Common Fund. The percentage fee has important advantages to the Class in that it provides self-regulating incentives for efficiency. First, it compensates counsel on the real value of the services provided (the amount of benefit conferred). Second, the percentage approach awards efficiency. Not only is there no reward for inefficiency, there is a penalty due to the fact that, if the work is unnecessary, the lawyer has wasted his time. Third, the percentage method encourages counsel to go the extra mile. Counsel has an incentive to push beyond a "good" recovery to an "excellent" recovery. The Court certainly considers the existing Common Fund to be an excellent recovery to the Class Members. Thus, under this percentage approach, the interests of the Class and Class Counsel are consistent and aligned.

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<sup>2</sup>The "Common Fund" shall equal the gross balance of the Settlement Proceeds, as that term is defined in the Settlement Agreement (\$13,250,605.78), plus all accrued interest of the Settlement Distribution Account until the date that the requested fees herein are paid out of the account. The Court notes that Class Counsel and Class Representatives are not seeking a fee on the future value of the Sanguine Defendants' agreement that no fee will be deducted in the future. The value of Sanguine's agreement not to charge fees in the future has an estimated \$3,000,000 value to the Class.



9. In determining what a “reasonable” fee should be, Oklahoma Courts routinely approve a percentage of the common fund as an appropriate measure of a reasonable attorney’s fee. The fee percentage of the common fund is typically 30% to 40% of the gross fund. (See authority cited by Class Counsel in their motion, which is incorporated herein by reference.) The Court notes that on the average the net recovery to Class Members, after the requested fees and expenses are paid, will be approximately 140% of the amount actually deducted from their royalties. The Court finds this recovery certainly is on the “excellent” side of the scale and justifies the Court’s consideration of the 40% requested fee.
10. The Court considered the basic guidelines established by the Oklahoma Supreme Court, to be followed by District Courts, in the fixing the reasonableness of fees. *State ex rel. Burk vs. City of Oklahoma City*, 1979 OK 115, 598 P.2d 659.
11. The Court has reviewed the detailed time records submitted by Class Counsel and finds that said time was reasonably expended for the benefit of the Class.<sup>3</sup> The Court has also reviewed the hourly rates of Class Counsel and finds them to be reasonable and within the acceptable range in the local legal community for this type of legal services. The Court further finds the lodestar (hours X rates) in this case is extremely low as a result of Class Counsel’s efficiencies and when considering the excellent results obtained in this case.
12. Beyond the lodestar, in *Burk*, the Supreme Court enunciated twelve factors to be considered by the District Court in fixing fees.

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<sup>3</sup>In fact, the Court commends Class Counsel for the efficiency reflected in their time records and the efficient use of the Court’s resources.

- A. Time and labor required. Counsel have made substantial time and labor commitments which have now inured to the financial benefit of the Plaintiff Class.
- B. The novelty and difficulty of the question. Class certification questions are known to be vigorously contested. Furthermore, the oil and gas accounting issues involved in this case are also very complex.
- C. The skill requisite to perform the legal services properly. The unique nature of this case, coupled with the issues, mandated that the Class be represented by highly skilled counsel. To prosecute these claims against a large corporate defendant represented by highly capable defense counsel with extensive resources, necessitated assembling a team of Class Counsel skilled in oil and gas litigation, as well as details of complex litigation. Counsels' qualifications, skills and experience is well known throughout the oil and gas legal community. Class Counsel are certainly highly skilled and capable counsel.
- D. The preclusion of other employment. Class Counsel are engaged in the on-going practice of law. Had Class Counsel not committed their resources to this case, Class Counsel could have accepted other matters, but did not. The prosecution of this case has very substantially reduced the Class Counsel's opportunity for employment in other matters.
- E. The customary fee. The fee percentage of a common fund is typically 30% to 40% of the gross fund.
- F. Whether the fee is fixed or contingent. Class Counsel entered into contingency fee agreements with the Class Representative that provides for an attorneys' fee of 40% of the gross consideration received. Pre-arranged fees, whether fixed or contingent, are not binding on the Court, but can be helpful in setting court awarded fees in a class action. Counsel for the Class has represented the Class with vigor and without prior compensation of any kind for their time.
- G. Time limitations imposed by client or circumstances. While this Litigation has not involved any client-imposed time limitations, the circumstances of the case required the litigation to be vigorously pursued if an excellent recovery through settlement was to be achieved. Class Counsel, in fact, did vigorously prosecute the case and obtained excellent results for the Class.
- H. The amount involved and the results obtained. Clearly, there can be no doubt that at the outset, Plaintiffs' Counsel had no assurance of any recovery. The



Marketing Fee Settlement Proceeds represent 100% of the Marketing Fee deducted from the royalty owners (approximately \$851,563) plus 12% interest on said Marketing Fee deductions (approximately \$409,043). The Gathering Fee Settlement Proceeds represent 100% of the Gathering Fee deducted from the royalty owners (approximately \$4,790,000) plus approx. \$7,200,000 interest on said Gathering Fee deductions. Assuming the Court grants these requested fees and litigation expenses, the net distribution to the Class will be approximately \$7,797,900, which represents the equivalent net recovery to the Class Members of 100% of the deductions made from their royalties (approximately \$5,641,500) plus approximately \$2,566,400 in interest, totaling approximately 140% of the principal damage of the Class, not including the value of Sanguine's agreement not to make future Gathering and Marketing Fee charges. The estimated value of this agreement not to make deductions in the future is in excess of \$3,000,000. Class counsel are not seeking fees on this benefit. However, this additional benefit would lower the effective requested fee rate from 40% of the cash consideration to 32.6% of the total settlement consideration. Considering all involved, the benefit recovered is indicative of an extremely outstanding result. As demonstrated above, but for the efforts of Counsel, no Common Fund would exist.

- I. Experience, reputation and ability of counsel. Counsels' qualifications, skill, experience, ability and reputation are well known throughout the oil and gas and complex litigation legal communities. Class Counsel are exceptional litigators.
- J. The undesirability of the case. Compared to most civil, contingent litigation attracting counsel to represent Plaintiffs, this Litigation clearly fits the initially "undesirable" test. Not many law firms would be willing to risk investing the time and expenses necessary to prosecute this Litigation. The Sanguine Defendants are well-financed, and are well represented. Certainly, the possibility of a recovery was a risky matter.
- K. Nature and length of the professional relationship with the client. Kerry Caywood has an ongoing attorney/client relationship with Ms. Robertson. Burns & Stowers, P.C. have an ongoing attorney/client relationship with Taylor Management, L.L.C.
- L. Awards in similar cases. The awards in similar cases was discussed in detail in Class Counsels' motion. The Court incorporates said discussion herein by reference. The Court finds that a 40% fee is reasonable.

13. In 1980, the Oklahoma Supreme Court followed and modified *Burk, supra*, to further instruct District Courts that counsel fees cannot be fairly awarded on the basis of time alone, but other factors, particularly the litigation risk factor, must be considered. See *Oliver's Sportcenter, Inc. vs. National Standard Ins. Co.*, 1980 OK 120, 615 P.2d 291. Certainly, the "litigation risk factor" and the investments of time and money required to create the Common Fund justify the requested fee.
14. The Court finds that attorneys' fees of 40% of the Common Fund created by the efforts of counsel for the class are appropriate, and should be, and are hereby, awarded.

**IT IS THEREFORE ORDERED** that on the date this order becomes Final and Unappealable, as that term is defined in the Settlement Agreement, Sanguine shall wire transfer from the Settlement Distribution Account to Burns & Stowers, P.C.'s Client Trust Account (for further distribution to Class Counsel) 40% of the balance of said Settlement Distribution Account on that date (plus estimated interest accrued on said amount to that date)<sup>4</sup> as reasonable attorneys' fees.

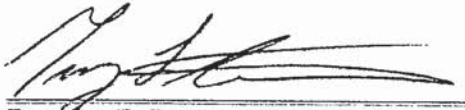
IT IS SO ORDERED this 11<sup>th</sup> day of July, 2003

  
DISTRICT JUDGE

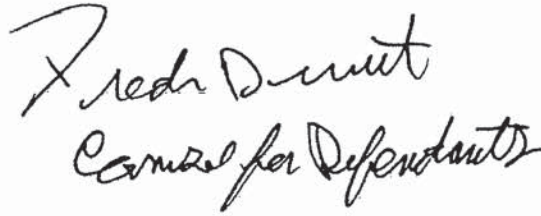
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<sup>4</sup>Said amount will be \$5,300,242.31 plus 40% of the accrued interest on the Settlement Proceeds.

Approved as to Form:



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