

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

DASA INVESTMENTS, INC.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 6:18-cv-083-SPS
	)	
ENERVEST OPERATING, L.L.C.;	)	
ENERVEST ENERGY INSTITUTIONAL	)	
FUND XIII-A, L.P.; ENERVEST ENERGY	)	
INSTITUTIONAL FUND XIII-WIB, L.P.;	)	
ENERVEST ENERGY INSTITUTIONAL	)	
FUND XIII-WIC, L.P.; ENERVEST, LTD.;	)	
and SM ENERGY COMPANY,	)	
	)	
Defendants.	)	

**ORDER AWARDING REIMBURSEMENT OF LITIGATION EXPENSES**

Before the Court is Class Counsel’s Motion for Approval of Reimbursement of Litigation Expenses (Doc. No. 91) (the “Motion”) and Memorandum of Law in Support Thereof (Doc. No. 92) (the “Memorandum”), wherein Class Counsel seek entry of an Order approving Class Counsel’s request for Reimbursement of Litigation Expenses, which were incurred in successfully prosecuting and resolving this Litigation, in an amount not to exceed \$350,000 (the amount set forth in the Notice). The Court has considered the Motion and Memorandum, all matters submitted in connection therewith and the proceedings on the Final Approval Hearing conducted on March 23, 2020. The Court finds the Motion should be granted.

IT IS THEREFORE ORDERED as follows:

1. This Order incorporates by reference the definitions in the Settlement Agreement and all terms not otherwise defined herein shall have the same meanings as set forth in the Settlement Agreement.

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

3. The Court has jurisdiction to enter this Order, and jurisdiction over the subject matter of the Litigation and all parties to the Litigation, including all Settlement Class Members.

4. The Notice stated that Class Counsel would seek Reimbursement of Litigation Expenses, which were incurred in successfully prosecuting and resolving this Litigation, in an amount not to exceed \$350,000. Notice of Class Counsel's request for Reimbursement of Litigation Expenses was given to all Settlement Class Members who could be identified with reasonable effort. The form and method of notifying the Settlement Class of the request for Reimbursement of Litigation Expenses is hereby determined to have been the best notice practicable under the circumstances, constitutes due and sufficient notice to all persons and entities entitled to receive such notice, and fully satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process.

5. Class Counsel provided the Court with abundant evidence in support of their request for Reimbursement of Litigation Expenses, including but not limited to: (1) the Motion and Memorandum; (2) the Declaration of Class Representative DASA by Gene Hacker; (3) the Declaration of Steven S. Gensler in Support of the Proposed Settlement, Notice of the Proposed Settlement, Class Counsel's Application for Attorney's Fees, and Reimbursement of Litigation Expenses ("Gensler Decl.") (Doc. No. 88); (4) the Declaration of Patrick M. Ryan and Jason A..

Ryan on Behalf of Class Counsel; (5) the Declaration of Patrick M. Ryan filed on behalf of Ryan Whaley (7) the Declaration of Michael Burrage filed on behalf of Whitten Burrage; (10) the Declaration of Jennifer M. Keough on Behalf of Settlement Administrator JND Legal Administration LLC, Regarding Notice Mailing and Administration of Settlement (“JND Decl.”); and (11) the Affidavits of Absent Class Members, Dan Little (Doc. No. 96-5); Castlerock Resources, Inc. (by Robert E. Gonce, Jr.) (Doc. No. 96-6); Clear Energy, Ltd. (by Phil Steffano) (Doc. No. 96-7); Acorn Royalty Company, LLC (by Robert Abernathy) (Doc. No. 96-8); Pagosa Resources, LLC (by Mike J. Weeks) (Doc. No. 96-9); and Kelsie Wagner Trustee of the Kelsie Wagner Trust and Successor Trustee of the Wade Costello Trust, Absent Class Member (Doc. No. 96-10). This evidence was submitted to the Court well before the objection and opt-out deadline, and none of the evidence was objected to or otherwise refuted by any Settlement Class Member.

6. Class Counsel is hereby awarded Reimbursement of Litigation Expenses in an amount not to exceed \$350,000, to be paid out of the Gross Settlement Fund. In making this award, the Court makes the following findings of fact and conclusions of law:

(a) The Settlement has created a fund of \$8,000,000 in cash and resulted in material binding changes to the EnerVest Defendants’ statutory interest payment practices and policies in Oklahoma, having a present value of at least \$7 million; Settlement Class Members will benefit from the Settlement that occurred because of the substantial efforts of Class Representative and Class Counsel;

(b) On January 21, 2020, JND caused the Notice of Settlement to be mailed via first-class regular mail using the United States Postal Service to 38,212 unique mailing records identified in the mailing data. *See* JND Decl. at ¶8. The Notice expressly stated that Class Counsel would seek Reimbursement of Litigation Expenses in an amount not to

exceed \$350,000, plus interest. There were no objections to the requested reimbursement of expenses;

(c) Class Counsel filed its Motion for Approval of Reimbursement of Litigation Expenses fourteen (14) days prior to the deadline for Settlement Class Members to object. No objections were filed in opposition to Class Counsel's Motion for Approval of Reimbursement of Litigation Expenses;

(d) The Parties here contractually agreed that the Settlement Agreement shall be governed *solely* by federal common law with respect to certain issues, including the reasonableness of attorneys' requests for reimbursement of expenses:

To promote certainty, predictability, the full enforceability of this Settlement Agreement as written, and its nationwide application, this Settlement Agreement shall be governed solely by federal law, both substantive and procedural, as to due process, class certification, judgment, collateral estoppel, res judicata, release, settlement approval, allocation, case contribution award, the right to and reasonableness of attorneys' fees and expenses, and all other matters for which there is federal procedural or common law, including federal law regarding federal equitable common fund class actions.

Settlement Agreement at ¶11.8;

(e) This choice of law provision should be and is hereby enforced. *See Boyd Rosene & Assocs., Inc. v. Kansas Mun. Gas Agency*, 174 F.3d 1115, 1121 (10th Cir. 1999) (citing Restat. 2d of Conflict of Laws, § 187, cmt. e (2nd 1988)); *see also Williams v. Shearson Lehman Bros.*, 917 P.2d 998, 1002 (Okla. Ct. App. 1995) (concluding that parties' contractual choice of law should be given effect because it does not violate Oklahoma's constitution or public policy); *Barnes Group, Inc. v. C & C Prods., Inc.*, 716 F.2d 1023, 1029 n.10 (4th Cir. 1983) ("Parties enjoy full autonomy to choose controlling law with regard to matters within their contractual capacity.");

(f) Applying federal common law, Rule 23(h) allows courts to reimburse counsel for “non-taxable costs that are authorized by law.” FED. R. CIV. P. 23(h). “As with attorneys fees, an attorney who creates or preserves a common fund for the benefit of a class is entitled to receive reimbursement of all reasonable costs incurred...in addition to the attorney fee percentage.” *Vaszlavik v. Storage Tech. Corp.*, No. 95-B-2525, 2000 U.S. Dist. LEXIS 21140, at \*11 (D. Colo. Mar. 9, 2000). Similarly, the Oklahoma class action statute provides “the court may award...nontaxable costs that are authorized by law or by the parties’ agreement.” 12 O.S. §2023(G)(1);

(g) Class Counsel set forth in the Notice that they would seek up to \$350,000 in reimbursement of expenses. *See* Doc. No. 66-1. To date, Class Counsel’s out-of-pocket expenses are \$114,916.89. I find that all of these expenses were reasonably and necessarily incurred by Class Counsel and are directly related to their prosecution and resolution of this Litigation. *See* Declaration of Patrick M. Ryan and Jason A. Ryan on Behalf of Class Counsel; Declaration of Patrick M. Ryan filed on behalf of RYAN WHALEY; and the Declaration of Michael Burrage filed on behalf of Whitten Burrage. I find that these expenses are fair and reasonable under Oklahoma state law for the same reasons they are fair and reasonable under federal common law and supported by the same evidence of reasonableness. The costs include routine expenses related to copying, court fees, postage and shipping, phone charges, legal research, and travel and transportation, as well as expenses for experts, document production and review, and mediation. These types of

expenses are typical of large, complex class actions such as this.<sup>1</sup> As such, the Expense Request is fair, reasonable and is hereby granted. *See* Gensler Decl. at ¶¶ 96-98; and


(h) Therefore, Class Counsel are awarded \$114,916.89 in past expenses and may request any additional amount of expenses Class Counsel may incur after the filing of this Order, not to exceed \$350,000, upon 14 days' written notice to the Court.

7. Any appeal or any challenge affecting this Order Awarding Litigation Expenses shall in no way disturb or affect the finality of the Final Approval Order, the Settlement Agreement, or the Settlement contained therein.

8. Jurisdiction is retained over the Parties and the Settlement Class Members as provided in the Order and Judgment Granting Final Approval of Class Action Settlement.

9. There is no reason for delay in the entry of this Order and immediate entry by the Clerk of the Court is expressly directed pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

IT IS SO ORDERED this 23<sup>rd</sup> day of March, 2020.

  
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Steven P. Shreder  
United States Magistrate Judge  
Eastern District of Oklahoma

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<sup>1</sup> Class Counsel's Expense Request does not include the Administration, Notice and Distribution Costs associated with effectuating the Settlement.