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

(1) DASA INVESTMENTS, INC., Plaintiff, v. (1) ENERVEST OPERATING, L.L.C.; (2) ENERVEST ENERGY INSTITUTIONAL FUND XIII-A, L.P.; (3) ENERVEST ENERGY INSTITUTIONAL FUND XIII-WIB, L.P.; (4) ENERVEST ENERGY INSTITUTIONAL FUND XIII-WIC, L.P.; (5) ENERVEST, LTD.; and (6) SM ENERGY COMPANY Defendants.	)	Case No. 6:18-cv-00083-SPS

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

I, Steven S. Gensler, declare as follows:

1. I am the Gene and Elaine Edwards Family Chair in Law at the University of Oklahoma College of Law, where I teach Civil Procedure and related classes. I am the author of FEDERAL RULES OF CIVIL PROCEDURE: RULES AND COMMENTARY (Thomson Reuters 2020) and a wide range of articles on federal practice and procedure. My cv is attached as Exhibit 1.

2. I have been retained by Class Counsel to provide an opinion as to: (1) the fairness, reasonableness, and adequacy of the Stipulation and Agreement of Settlement ("Settlement Agreement"); (2) the adequacy of the Notice of Proposed Settlement; and (3) the reasonableness of Class Counsel's request for attorney's fees and reimbursement of expenses.

3. In forming these opinions, I have reviewed and relied upon, among other things: (1) pleadings, filings, and orders in this case; (2) the Settlement Agreement; (3) the Declaration of Mediator Steven J. Barghols; (4) the Declaration of Jennifer M. Keough on Behalf of Settlement Administrator JND Legal Administration LLC, Regarding Notice Mailing and Administration of Settlement ("JND Decl."); (5) the Affidavit of Barbara Ley; (6) the Declaration of Patrick M. Ryan and Jason A. Ryan on Behalf of Class Counsel ("Joint Class Counsel Decl."); (7) the Declaration of Patrick M. Ryan; (8) the Declaration of Michael Burrage; (9) the Declaration of Gene Hacker on behalf of Class Representative DASA Investments, Inc.; and (10) the Affidavits of Class Members: Dan Little; Castlerock Resources, Inc.; Clear Energy, Ltd.; Acorn Royalty Company, LLC; and Pagosa Resources, LLC; and Kelsie Wagner, Trustee of the Kelsie Wagner Trust and Successor Trustee of the Wade Costello Trust.

Summary of Opinions

4. It is my opinion that (a) the Settlement Agreement submitted for approval is fair, reasonable, and adequate; (b) the form of and manner of distribution of the Notice of Proposed Settlement is fair and adequate; (c) the fee award of $3.2 million requested in this case—representing 40% of the immediate cash payment from the defendants to the Class Members—is fair and reasonable compensation for the services provided to the Class Members and the benefits bestowed upon the Class Members by the terms of the settlement; and (d) Class Counsel's request for reimbursement of their litigation expenses is fair and reasonable.[1]

The Case and Settlement

[1] The Notice sent to the Class stated that Class Counsel may seek reimbursement of up to $350,000 in litigation expenses. However, Class Counsel have represented to me that, based upon information currently available, they do not expect their litigation expenses to exceed $200,000.

5. Plaintiff DASA Investments, Inc. (DASA) initiated this lawsuit against the EnerVest Defendants in LeFlore County, Oklahoma on February 7, 2018. On March 16, 2018, the Enervest Defendants removed the case to this court, invoking 28 U.S.C. § 1332(d), the class-action jurisdictional provisions enacted by the Class Action Fairness Act of 2005 ("CAFA"). SM Energy (SM) was added as a defendant in DASA's First Amended Complaint filed on April 6, 2018.

6. This case is about the interest producers owe when they are late paying oil and gas proceeds. The Oklahoma Production Revenue Standards Act ("PRSA") establishes time periods for the payment of oil and gas production proceeds. If payments are not made on time, the PRSA requires the producer to pay interest at rates set forth in the statute. *See* 52 O.S. § 570.10 (D).

7. DASA alleges that the Enervest Defendants and SM [hereinafter "Defendants"] failed to pay statutory interest when they made late proceed payments, in violation of the PRSA. Primarily, DASA alleges that, instead of paying statutory interest automatically as required by the PRSA, the Defendants followed a uniform policy and practice of only paying statutory interest if the owner specifically requested it. DASA asserts claims for breach of statutory duty to pay interest, breach of duty to investigate and pay, fraud, accounting and disgorgement, and injunctive relief and seeks relief in the form of damages, an accounting, disgorgement, punitive damages, attorney's fees and litigation costs, and an injunction ordering the defendants to pay interest in the future as required by law.

8. Class Counsel investigated, analyzed, and litigated the claims against the Defendants for over two years.

9. DASA and Class Counsel expended considerable time and resources responding to multiple rounds of dispositive motions. The EnerVest Defendants first moved to dismiss under Rule 12(b)(6) on March 23, 2018. In response, DASA filed its First Amended Complaint on April

6, 2018, amending certain allegations and adding SM as a defendant. The EnerVest Defendants and SM then filed separate motions to dismiss the First Amended Complaint under Rule 12(b)(6). These motions were fully briefed. Eventually, they were denied in full on February 5, 2019.

10. In the meantime, Class Counsel undertook extensive discovery. The EnerVest Defendants first made an initial production of accounting and pay history data in April 2018. In August 2018, DASA served discovery requests on the EnerVest Defendants and SM. DASA served 30 RFPs, 5 requests for admission, and 15 interrogatories on the EnerVest Defendants. DASA served 29 RFPs, 4 requests for admission, and 15 interrogatories on SM. The parties had multiple discussions about scope and production leading to the Defendants producing several gigabytes of electronic data.

11. In pursuing and evaluating the Class' claims, Class Counsel also worked extensively with experts on subjects including accounting, class certification, liability, and damages. This included working with experts for over a year to fully understand the accounting data provided and develop an accurate damages model.

12. On February 15, 2019, Judge White ordered the parties to provide information confirming their commitment to mediation. The parties informed the Court of their scheduled mediation before Steve Barghols. Mr. Barghols is a partner at Hampton Barghols Pierce, PLLC, currently specializing in mediation and arbitration. He has over 40 years of litigation experience, including substantial oil and gas litigation, and has been recognized as a Top 10 or Top 50 *Oklahoma Super Lawyer* since 2006. He has mediated more than 3,500 matters and is recognized as a Band 1 mediator (the highest ranking available) by *Chambers and Partners U.S.A.* See Barghols Decl., at ¶4.

13. The mediation occurred on May 14, 2019, taking place at Mr. Barhols' offices in Oklahoma City, OK. The parties submitted extensive mediation briefs in advance of the mediation. The mediation did not result in a settlement, but the parties continued to discuss settlement throughout the next month.

14. The parties reached an agreement in principle on Saturday, June 15, 2019. They spent several weeks thereafter finalizing a memorandum of understanding and then reducing it to the formal Settlement Agreement presented to the court for approval.

15. Under the terms of the Settlement Agreement, the Defendants agreed to pay a total of $8 million into a fund, from which distributions will be made to Class Members, in exchange for a release of the class claims.[2] The EnerVest Defendants also agreed to change their interest-payment practices going forward ("Future Benefits").[3] Barbara Ley estimates the value of these Future Benefits to the Class to be an additional $7 million dollars. Ley Aff., at ¶3. Accordingly, the total present value of the Settlement is estimated to be at least $15 million.

The Settlement is Fair, Reasonable, and Adequate

16. Under Federal Rule of Civil Procedure 23(e), the court must approve any settlement of a class action. Approval requires the court to find that the settlement is "fair, reasonable, and adequate." FED. R. CIV. P. 23(e)(2). Because the trial court judge overseeing the case has the best vantage point to consider all of the myriad considerations, the determination of whether a proposed settlement is fair, reasonable, and adequate is committed to the discretion of the district court judge. *See Fager v. CenturyLink Communs., LLC*, 854 F.3d 1167, 1174-75 (10th Cir. 2016); *Rutter & Wilbanks Corp. v. Shell Oil Co.*, 314 F.3d 1180, 1186-87 (10th Cir. 2002).

[2] The EnerVest Defendants are paying $7 million. SM is paying $1 million.
[3] SM is not a part of this component of the settlement because it no longer operates any of the class wells.

17. Historically, the Tenth Circuit has identified four factors that must be considered in approving a class action settlement:

(1) whether the proposed settlement was fairly and honestly negotiated;

(2) whether serious questions of law and fact exist, placing the ultimate outcome of the litigation in doubt;

(3) whether the value of an immediate recovery outweighs the mere possibility of future relief after protracted and expensive litigation; and

(4) the judgment of the parties that the settlement is fair and reasonable.

Rutter & Wilbanks Corp. v. Shell Oil Co., 314 F.3d 1180, 1188 (10th Cir. 2002).

18. Until 2018, Rule 23(e) did not provide any guidance on the factors courts should look to when determining whether a settlement is fair, reasonable, and adequate. Amendments to Rule 23(e), effective December 1, 2018, explain that, when making that determination, courts must consider whether:

(A) the class representatives and class counsel have adequately represented the class;

(B) the proposal was negotiated at arm's length;

(C) the relief provided for the class is adequate, taking into account:

(i) the costs, risks, and delay of trial and appeal;

(ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;

(iii) the terms of any proposed award of attorney's fees, including timing of payment; and

(iv) any agreement required to be identified under Rule 23(e)(3), and

(D) the proposal treats class members equitably relative to each other.

19. The Tenth Circuit has yet to address what effect, if any, the December 1, 2018 amendments have on the application of the *Rutter* factors. But there is obvious and significant overlap, perhaps enough that the Tenth Circuit will continue using the *Rutter* factors with perhaps some small adjustments.[4] For purposes of this Declaration, I will follow the structure of the 2018 amendments.[5] However, it is my opinion that the Settlement is fair, reasonable, and adequate under either approach.

20. First, it is my opinion that the Class Representative has adequately represented the class. FED. R. CIV. P. 23(e)(2)(A). On behalf of Class Representative DASA, Gene Hacker took an active and informed role in the progress of the case and the major decisions, including the decision to settle. *See* Hacker Decl., at ¶¶ 9, 11. To my knowledge, neither he nor DASA has any conflicts with the Class Members that in any way prevented them from acting in the collective interest of the Class Members. By any measure, DASA satisfied its obligations as Class Representative.

21. Class Counsel have also adequately represented the Class. FED. R. CIV. P. 23(e)(2)(A). The lawyers and law firms working for the Class are all experienced and highly regarded class action lawyers. They worked diligently on the case for over two years, resisting the

[4] Other courts have already used their pre-existing fee-award factors in cases decided after the 2018 amendments took effect. *See, e.g.*, *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 330 F.R.D. 11, 29 (E.D.N.Y. 2019) ("The Court understands the new Rule 23(e) factors to add to, rather than displace, the *Grinnell* factors."); *see also* FED. R. CIV. P. 23(e)(2) advisory committee's note (2018) ("The goal of this amendment [to Rule 23(e)(2)] is not to displace any [circuit case-law] factor, but rather to focus the court and the lawyers on the core concerns of procedure and substance that should guide the decision whether to approve the proposal.").

[5] *See* FED. R. CIV. P. 23(e)(2) advisory committee's note (2018) ("This amendment therefore directs the parties to present the settlement to the court in terms of a shorter list of core concerns, by focusing on the primary procedural considerations and substantive qualities that should always matter to the decision whether to approve the proposal.").

Defendants' multiple efforts to end or limit the case via dispositive motions. They conducted timely and appropriate discovery. They retained appropriate experts to aid them in developing the case and putting it in a position of strength for settlement discussions. Their experience and skill in pursuing high-stakes oil-and-gas class actions undoubtedly contributed to their ability to reach the settlement they achieved.

22. Second, it is my opinion that the Settlement was negotiated at arm's-length. FED. R. CIV. P. 23(e)(2)(B). There is nothing about this case to suggest that it was anything other than an adversarial matter. The Parties litigated for over two years. Settlement discussions were conducted with the assistance of a skilled and experienced mediator, who worked with the parties to identify an agreed resolution. The mediator, Mr. Barghols, had a front row seat and saw nothing to indicate collusion; just skilled advocates fully and vigorously representing their clients' interests. *See* Barghols Decl., at ¶10.

23. Third, it is my opinion that the relief provided for the Class is adequate. FED. R. CIV. P. 23(e)(2)(C).

24. "In most cases, the key question is whether the value of the relief provided by the settlement is commensurate with the value of the claims to be released." *See* STEVEN S. GENSLER, FEDERAL RULES OF CIVIL PROCEDURE: RULES AND COMMENTARY 653 (2020 ed. Thomson Reuters). Making this type of forecast is not something that can be done "with arithmetic accuracy." *See* FED. R. CIV. P. 23(e) advisory committee's note (2018). That is why the Advisory Committee couches it in terms of "the likely *range* of possible classwide recoveries and the likelihood of success in obtaining such results." *Id.*

25. The Settlement in this case provides excellent relief to the Class. As documented in the Affidavit of Barbara Ley, the Settlement represents a recovery of all of the Settlement

Class's alleged statutory interest underpayment for the principal claim asserted by the Class between February 2013 and October 2019. *See* Ley Aff. at ¶3. That is an excellent recovery under any measure.

26. As part of the adequacy analysis under amended Rule 23(e), courts also consider "the costs, risks, and delay of trial and appeal." FED. R. CIV. P. 23(e)(2)(C)(i). No settlement gives one side total victory. Plaintiffs take less than they would hope for; defendants pay more than they would like to. But in the process, they both avoid the risk of a bad loss later. As the Tenth Circuit itself put it in the class-action approval setting, "[t]hat is the nature of a settlement." *Tennille v. Western Union Co.*, 785 F.3d 422, 435 (10th Cir. 2015).

27. The Class Claims in this case were strong. But even so, the costs and risks of taking this case to trial remained significant.

28. First, the case would need to be certified for litigation, something the Defendants have indicated they would strenuously oppose. Indeed, the Settlement Agreement explicitly provides that "[b]y agreeing to settle the claims of the Settlement Class in the Litigation, Defendants do not admit that the Litigation could have been properly maintained as a contested class action." SA, ¶ 11.1. In a class action, uncertainty about whether a case will be certified for litigation (as opposed to settlement) is a factor placing the ultimate outcome of the litigation in doubt. FED. R. CIV. P. 23(e)(2) advisory committee's note (2018) ("If the class has not yet been certified for trial, the court may consider whether certification for litigation would be granted were the settlement not approved."); *see also Tennille*, 785 F.3d at 435 (listing obstacles to proceeding as a class action among those that placed the outcome of future litigation in doubt).

30. Then, the Class Members would need to prevail on their theory of liability. During the course of this case, the Defendants steadfastly denied that they violated their interest payment

obligations under the PRSA. In the Settlement Agreement, the Defendants continue that denial. *See* SA, ¶11.1 ("Defendants expressly deny all allegations of wrongdoing or liability with respect to the claims and allegations in the Litigation."). Whether the Defendants violated the PRSA, what damages resulted from that breach, whether any of those damages are barred by a statute of limitations, and which Defendants might be liable were all contested questions placing the ultimate outcome of the litigation in doubt.

31. Finally, the Class Members would need to deal with the cost, risk, and delay of potentially two rounds of appeals. The first appeal risk would come after litigation certification, should the Defendants seek an interlocutory appeal of the certification decision under Rule 23(f). The second appeal risk would come after entry of a final judgment awarding relief to the class.

32. By settling now, DASA and Class Counsel secured a guaranteed payment from the Defendants of $8 million, a recovery amounting to almost 100% of the principal unpaid statutory interest. On top of that, DASA and Class Counsel secured a binding commitment from the EnerVest Defendants to change their interest-payment practices going forward, a change that Plaintiff's expert estimates to have an additional $7 million in value for the Class Members. Given all of the considerations mentioned above, the decision to accept the offer, and avoid the risks posed by continued litigation, was eminently reasonable. As the Tenth Circuit emphasized when affirming a settlement approval over an objector's speculation that some better terms might have been attained, it was not unreasonable for the class to accept the terms of the settlement "instead of deciding to undertake expensive litigation, with an uncertain outcome, in order to try to obtain these additional recoveries." *Tennille*, 785 F.3d at 435.

33. Another of the "adequacy" factors to consider under amended Rule 23(e) is "the effectiveness of any proposed method of distributing relief to the class, including the method of

processing class-member claims." FED. R. CIV. P. 23(e)(2)(C)(i). This is a cash settlement. The fund will be distributed by JND Legal Administration, a firm with extensive experience in class action administration. The Class Members do not need to submit claims. The only thing they need to do is not opt out and cash their checks once they arrive.

34. To the best of my knowledge, upon inquiry, there are no agreements required to be identified under Rule 23(e)(3) that have not been disclosed.[6] *See* FED. R. CIV. P. 23(e)(2)(C)(iv).

35. Finally, the Settlement treats the Class Members equitably relative to each other. FED. R. CIV. P. 23(e)(2)(D). The Class Members will be paid according to a distribution scheme in accordance with a Court-approved Plan of Allocation. *See* SA, at ¶6.2. The Plan of Allocation submitted for the Court's approval has been endorsed as fair and reasonable by Class Representative's oil and gas accounting expert, Barbara Ley. *See* Ley Aff., at ¶6.

36. In summary, it is my opinion that all of the Rule 23(e)(2) factors clearly point to the Settlement being fair, reasonable, and adequate.

37. I now return to the Tenth Circuit's *Rutter* factors. Should the Court wish to analyze the Settlement under the four *Rutter* factors, it is my opinion that the first three factors are satisfied for the reasons detailed in paragraphs 18 through 32 above.

38. The fourth *Rutter* factor is "*the judgment of the parties that the settlement is fair and reasonable.*" It is evident that the parties believe that the Settlement they reached, after contested litigation and arm's-length negotiation, is fair and reasonable. Mr. Hacker, on behalf of the named Plaintiff and now Class Representative, explains his full support for the Settlement in his declaration. *See* Hacker Decl., at ¶14. Class Counsel also describe their full support for the

[6] I understand that the parties have entered into a Supplemental Agreement setting the opt-out threshold for any refund to Defendants and that the parties have identified this Supplemental Agreement in Section 6.4 of the Settlement Agreement that was filed with the Court.

Settlement in their declaration. *See* Joint Class Counsel Decl. Further, as of the time I executed this declaration, several absent Class Members had signed affidavits supporting the Settlement. *See, e.g.,* Declarations of Dan Little; Castlerock Resources, Inc.; Clear Energy, Ltd.; Acorn Royalty Company, LLC; Pagosa Resources, LLC; and Kelsie Wagner, Trustee of the Kelsie Wagner Trust and Successor Trustee of the Wade Costello Trust.

The Form and Manner of Notice

39. In a class certified under Rule 23(b)(3), "the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." FED. R. CIV. P. 23(c)(2)(B).

40. For known class members with a known address, it is both customary and sufficient to give individual notice by first-class mail. *See Fager v. CenturyLink Communications, LLC*, 854 F.3d 1167, 1173-74 (10th Cir. 2016). Courts often supplement first-class mail notice with other means, including publication in newspapers and the creation of websites providing information about the action and the proposed settlement. Notice programs that use multiple methods of giving notice are recognized as good practice and are discussed favorably in the Committee Notes accompanying the 2018 amendments to Rule 23(c)(2)(B).

41. The parties retained JND Legal Administration to administer the Settlement. JND is an established class-action claims administrator with extensive experience and expertise in handling class-action settlement administration. *See* JND Decl., at ¶¶2-4.

42. In accordance with the Preliminary Approval Order, and at the direction of the parties, on January 21, 2020, JND mailed the Notice of Proposed Settlement, Motion for Attorneys' Fees, and Fairness Hearing via first-class mail to the last known mailing address (verified and updated for changes of address through the U.S. Postal Service's database) of each

Class Member who could be identified from the payment history data provided by Defendants pursuant to ¶3.6 of the Settlement Agreement. *Id.* at ¶8. For notices returned as undeliverable, JND will conduct follow-up investigation to try to get an updated address for re-mailing. *Id.* at ¶9.

43. On January 23, 2020, JND arranged for the Summary Notice to be published in *The Oklahoman* and the *Tulsa World*, the two largest general circulation papers in Oklahoma, and in four papers of local circulation: *The Daily Ardmoreite*, the *Fairview Republican*, the *McAlester News-Capital*, and the *Holdenville Tribune*.[7] *Id.* at ¶11.

44. On January 22, 2020, JND established a website dedicated to this litigation, which hosts copies of important case documents, gives answers to frequently asked questions, and provides Class Members with contact information. *Id.* at ¶12.

45. Rule 23(c)(2)(B) also lists seven topics that the notice "must clearly and concisely state in plain, easily understood language." The Notices identified above address all of the required topics and do so in language that, in my opinion, is clear, concise, plain, and easily understood.

46. It is my opinion that the form and content of the notice given, and manner in which notice was given, satisfied the requirement of giving the best notice that is practicable under the circumstances. It is also my opinion that the procedures for requesting exclusions and filing objections are fair and reasonable, as approved by the Court in the Preliminary Approval Order.

47. The practices employed in this case and carried out by JND are industry standard and are routinely approved as part of administering oil-and-gas royalty class action settlements. The combination of first-class mail with other methods of giving notice, including newspaper publication and the creation of a case-specific website, illustrates the type of multi-modal notice

[7] The *Holdenville Tribune* is now known as the *Hughes County Tribune*.

program that represents best practice in the federal courts and has been implicitly endorsed by the Civil Rules Advisory Committee.

The Fee Request

48. In this common-fund class action, the Court is authorized to make a fee award to Class Counsel to recognize the work done on behalf of, and the benefit conferred upon, all Class Members. *See Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *see also* STEVEN S. GENSLER, FEDERAL RULES OF CIVIL PROCEDURE: RULES AND COMMENTARY 663 (2020 ed. Thomson Reuters).

49. Both well-settled case law and Rule 23(h) establish that the standard for setting a class-action fee award in federal court is reasonableness. *See Brown v. Phillips Petroleum Co.*, 838 F.2d 451, 453 (10th Cir. 1988); FED. R. CIV. P. 23(h) advisory committee's note (2003) (stating that "reasonableness" is the customary measurement for common fund fees). The determination of what is reasonable in any particular case "is a matter uniquely within the discretion of the trial judge." *Brown*, 838 F.2d at 453.

50. In this case, the parties have agreed to use federal-law standards to measure reasonableness of the fee award. Settlement Agreement, ¶¶7.1, 11.8.[8] This Court has followed this type of choice-of-law provision in similar oil-and-gas class actions on several occasions. *See, e.g., Reirdon v. Cimarex Energy Co.*, No. 16-cv-445-SPS (E.D. Okla. Jan. 29, 2020) (Doc. No. 132, at

[8] The choice-of-law clause avoids the current uncertainty in the Tenth Circuit about what law governs the determination of class counsel fees when the settlement agreement does not specify the law to be applied. In *Chieftain Royalty Co. v. EnerVest Energy Institutional Fund XIII-A, L.P., et al.*, 888 F.3d 455 (10th Cir. 2017), a panel of the Tenth Circuit held that, in diversity class-action cases, the federal court should look to state law for determining the reasonableness of class counsel's fee award. As I have written in other materials submitted to this Court and others, the panel opinion departs from longstanding federal-court class action practice, not just in the Tenth Circuit, but in all of the federal circuits.

4); *Chieftain Royalty Co. v. Marathon Oil Co.*, No. 17-cv-334-SPS (E.D. Okla. Mar. 8, 2019) (Doc. No. 120, at 4); *Reirdon v. Cimarex Energy Co.,* No. 16-cv-113-KEW (E.D. Okla. Dec. 18, 2018) (Doc. No. 105, at 4)*; Reirdon v. XTO Energy, Inc.,* No. 16-cv-87-KEW (E.D. Okla. Jan. 29, 2018) (Doc. No. 124, at 4); *Chieftain Royalty Co. v. XTO Energy, Inc.,* No. 11-cv-29-KEW (E.D. Okla. Mar. 27, 2018) (Doc. No. 231, at 5).

51. Under the federal-law standards followed in the Tenth Circuit, the preferred method for determining the reasonableness of a fee award in a common fund case is the percentage of recovery method ("POF"). *See Gottlieb v. Barry*, 43 F.3d 474, 483 (10th Cir. 1994); *Rosenbaum v. MacAllister*, 64 F.3d 1439, 1445 (10th Cir. 1995). *See also Reirdon v. Cimarex Energy Co.*, No. 16-cv-445-SPS (E.D. Okla. Jan. 29, 2020) (Doc. No. 132, at 6); *Chieftain Royalty Co. v. Marathon Oil Co.,* No. CIV-17-334-SPS (E.D. Okla. Mar. 8, 2019) (Doc. No. 120, at 4); *Reirdon v. Cimarex Energy Co.,* No. 6:16-cv-113-KEW (E.D. Okla. Dec. 18, 2018) (Doc. No. 105, at 6); *Cecil v. BP America Production Co.,* No. 16-cv-410-KEW (E.D. Okla. Nov. 19, 2018) (Doc. No. 260, at 6); *Chieftain Royalty Co. v. XTO Energy, Inc.,* No. CIV-11-29-KEW (E.D. Okla. Mar.27, 2018) (Doc. No. 231, at 6); *Reirdon v. XTO Energy, Inc.,* No. 6:16-CV-00087-KEW (E.D. Okla. Jan. 29, 2018) (Doc. No. 124, at 6); *Chieftain Royalty Co. v. Laredo Petroleum, Inc.,* No. CIV-12-1319-D (W.D. Okla. May 13, 2015) (Doc. No. 52, at 5).

52. The Tenth Circuit is hardly unique in this regard. Most experts agree that the POF approach is the preferred approach in common fund cases. *See* PRINCIPLES OF THE LAW OF AGGREGATE LITIGATION § 3.13(b) (AM. LAW. INST. 2010) (endorsing the percentage of recovery method for common fund cases). In its most recent publication addressing fee awards, the Federal Judicial Center explained why the POF approach is preferred:

> The percentage method offers several advantages. First, it helps ensure that the fee award will simulate marketplace rates, since most common fund cases are handled

> on a contingency basis. Second, compared with the lodestar method, the percentage method requires less detailed record-keeping by the plaintiff and consumes fewer court resources. Finally, unlike the lodestar method, the percentage method provides incentive to plaintiff's counsel to settle the case early and avoid racking up litigation fees.

ALAN HIRSCH ET AL., AWARDING ATTORNEYS' FEES AND MANAGING FEE LITIGATION 82-83 (Federal Judicial Center, 3d ed. 2015). The preference for the POF approach in common fund cases traces back over 30 years to the Third Circuit's path-marking report criticizing the use of the lodestar method in common fund cases and strongly urging courts to opt for the POF method instead. *See Report of the Third Circuit Task Force on Court Awarded Attorney Fees*, 108 F.R.D. 237 (1985).

53. In terms of general fee-award methodology, the Tenth Circuit has, since 1988, instructed district courts to analyze the reasonableness of fee awards under the factors developed in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974). *See Brown*, 838 F.2d at 454-55. The *Johnson* factors are (1) the time and labor required, (2) the novelty and difficulty of the questions presented by the case, (3) the skill requisite to perform the legal services properly, (4) the preclusion of other employment by the attorneys due to acceptance of the case, (5) the customary fee, (6) whether the fee is fixed or contingent, (7) any time limitations imposed by the client or the circumstances, (8) the amount involved and the results obtained, (9) the experience, reputation and ability of the attorneys, (10) the undesirability of the case, (11) the nature and length of the professional relationship with the client, and (12) awards in similar cases. *Id.*

54. Because the *Johnson* factors were developed in the context of statutory fee-shifting, the Tenth Circuit held, when it adopted the *Johnson* factors, that the scheme should be modified when applied in a common fund case to better fit the setting. *See Brown*, 838 F.2d at 453. Not all of the factors will apply in every case. *Id.* at 456; *Gudenkauf v. Stauffer Commc'ns, Inc.*, 158 F.3d

1074, 1083 (10th Cir. 1998) (trial courts need not specifically address each factor in every case). And the weight to be given each factor varies when the court is awarding fees from a common fund. *Brown*, 838 F.2d at 456.

55. In a common fund case, the most important difference in the application of the *Johnson* factors is the emphasis placed on the eighth factor—the result obtained—which is the most important factor and deserves the greatest weight. *Brown*, 838 F.2d at 456. As the Advisory Committee later put it when adopting the 2003 amendments to Rule 23, "[f]or a percentage fee approach to fee measurement, results achieved is the basic starting point." FED. R. CIV. P. 23(h) advisory committee's note (2003); *see also Farrar v. Hobby*, 506 U.S. 103, 114 (1992) ("[T]he most critical factor in determining the reasonableness of a fee award is the degree of success obtained.") (quotations omitted).

56. The other important difference is the diminished role of the first *Johnson* factor—the time and labor involved. In *Brown* itself, the Tenth Circuit recognized that the differences between common fund cases and statutory fee cases cautioned against importing a formal lodestar requirement—the usual starting point in statutory fee-shifting cases—into common fund cases. Accordingly, the Tenth Circuit recast the nature of the "time and labor" inquiry in common fund cases. While "time and labor" is a factor to be considered, the court need not conduct a lodestar analysis to assess it. Rather, the court may make a general finding regarding the expenditure of time and labor based on the record as a whole. *Brown*, 838 F.2d at 456 & n.3. *See also Reirdon v. Cimarex Energy Co.*, No. 16-cv-445-SPS (E.D. Okla. Jan. 29, 2020) (Doc. No. 132, at 5-6); *Chieftain Royalty Co. v. Marathon Oil Co.,* No. CIV-17-334-SPS (E.D. Okla. Mar. 6, 2019) (Doc. No. 120, at 5-6); *Reirdon v. Cimarex Energy Co.,* No. 16-CV-113-KEW (E.D. Okla. Dec. 18, 2018) (Doc. No. 105, at 5-6); *Cecil v. BP America Production,* No. 16-CV-410- KEW (E.D. Okla.

Nov. 19, 2018) (Doc. No. 260, at 6); *Chieftain Royalty Co. v. XTO Energy, Inc.,* No. CIV-11-29-KEW (E.D. Okla. Mar. 27, 2018) (Doc. No. 231 at 6); *Reirdon v. XTO Energy, Inc.,* No. 6:16-CV-00087-KEW (E.D. Okla. Jan. 29, 2018) (Doc. No. 124 at 5); *Chieftain Royalty Company v. QEP Energy Company,* No. CIV-11-212-R (W.D. Okla. May 31, 2013) (Doc. No. 182, at 4, n.3); *CompSource Okla. v. BNY Mellon, NA.,* 2012 WL 6864701, *8 (E.D. Okla. 2012) ("A majority of circuits recognize that trial courts have the discretion to award fees based solely on a percentage of the fund approach and are not required to conduct a lodestar analysis in common fund class actions."); *Childs v. Unified Life Ins. Co.,* 2011 WL 6016486, *15, n.10 (N.D. Okla. 2011) ("Because the other *Johnson* factors, combined, warrant approval of the common fund fee sought by class counsel, the Court need not engage in a detailed, lodestar-type analysis of the 'time and labor required' factor.").

57. In this case, Class Counsel seek a fee of $3,200,000. In my opinion, an analysis of the *Johnson* factors, as modified for the common fund setting by *Brown,* demonstrates that an award of attorney's fees in that amount would be fair and reasonable.

58. First and foremost, the $8 million in cash that the Defendants agreed to pay represents all of the Settlement Class's alleged statutory interest underpayment for the principal claim asserted by the Class between February 2013 and October 2019. *See* Ley Aff. at ¶3. That is an excellent result in light of the cost, delay, and risk associated with future litigation.

59. Importantly, this is a cash recovery that will be distributed to Class Members automatically. There are no claim forms to fill out, no elections to make, and no documentation to scavenge out of old records. Indeed, Class Members do not have to take any action whatsoever to receive their benefits.

60. This is not the type of settlement that has caused judges to be wary of awarding significant percentage-based fees. To explain, there is sometimes a big difference between the face value of a settlement and the amount of money that actually gets paid to class members. Typically, this happens when class members must submit claims to participate in the settlement fund, especially if that process entails filling out a complicated claim form or providing receipts or other documentation that is unlikely to still be in the claimant's possession. In that situation, claim rates can be very low—often under 10%—and the amount of money put in the hands of class members can be a fraction of the face value of the settlement.

61. But as explained above, there is no claims process in this Settlement. JND will cut checks to Class Members automatically using information obtained from the Defendants' paydecks. The only thing Class Members need to do to get their share of the Net Settlement Fund is not opt out and then cash their checks after they arrive in the mail.

62. The Settlement also provides a very substantial future benefit. During the course of this litigation, the EnerVest Defendants have asserted that they do not need to pay statutory interest until an individual owner specifically makes a demand for it in writing. In the Settlement Agreement, the EnerVest Defendants continue to take that position. As history has shown, few owners have been experienced or savvy enough to make the demand that the EnerVest Defendants say is required to trigger statutory interest payments. As part of the Settlement, however, the EnerVest Defendants have agreed to change their practices and automatically pay statutory interest to all, without the need for a specific demand. *See* SA, at ¶2.4. To put it plainly, the EnerVest Defendants have agreed to implement the very thing that the Class Members asked for by way of injunctive relief. Expert Barbara Ley's conservative estimate of the net present value of this future benefit is at least $7,000,000. Ley Aff., at ¶3.

63. It is well established that the value of future benefits should be included when determining the size of the recovery obtained for the class. *See* PRINCIPLES OF THE LAW OF AGGREGATE LITIGATION § 3.13(b) (AM. LAW. INST. 2010). *See also Chieftain Royalty Co. v. Marathon Oil Co.,* No. CIV-17-334-SPS (E.D. Okla. Mar. 6, 2019) (Doc. No. 120, at 8-9); *Reirdon v. Cimarex Energy Co.,* No. 16-CV-113-KEW (E.D. Okla. Dec. 18, 2018) (Doc. No. 105, at 8-9); *Cecil v. BP America Production,* No. 16-CV-410-KEW (E.D. Okla. Nov. 19, 2018) (Doc. No. 260, at 9); *Chieftain Royalty Co. v. XTO Energy, Inc.,* No. CIV-11-29-KEW (E.D. Okla. Mar. 27, 2018) (Doc. No. 231, at 9-10); *Reirdon v. XTO Energy, Inc.,* No. 6:16- CV-00087-KEW (E.D. Okla. Jan. 29, 2018) (Doc. No. 124, at 8-9); *Chieftain Royalty Company v. QEP Energy Company,* No. CIV-11-212-R (W.D. Okla. May 31, 2013). Thus, even though Class Counsel is not asking the Court to award a fee from the future benefit, the existence of the future benefit is still relevant to the fee request because it is a part of the Settlement recovery and therefore speaks to the overall quality of the result.

64. In my opinion, the future benefit is a valuable part of the overall Settlement recovery. This aspect of the Settlement protects them going forward and achieves for the future one of the principal objectives of the lawsuit—to obtain payment of statutory interest on late payments of oil and/or gas proceeds.

65. I now turn to the remaining *Johnson* factors.

66. As the Tenth Circuit has made clear, the *Johnson* factors are not a checklist that must be analyzed in formulaic fashion. Not all factors will apply in all cases, and the weight to give any particular factor will vary even when the factor does apply. *Brown*, 838 F.2d at 456. Moreover, many of the factors really just use different data points to provide insight into the same underlying concept. To avoid woodenly addressing irrelevant factors, and to minimize repetition

as to the relevant factors, my practice is to organize the other *Johnson* factors into two functional groupings.

67. Six of the other *Johnson* factors examine, in different ways, whether the fee request is consistent with the market for legal representation of this type. These factors are: (5) the customary fee; (6) whether the fee is fixed or contingent; (9) the experience, reputation and ability of the attorneys; (10) the undesirability of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases.

68. Examining the fee request from a market-based perspective makes sense in that absent Class Members do not have an express, pre-existing attorney-client relationship with Class Counsel. Thus, in determining how much Class Counsel should be paid for the work done on behalf of the absent Class Members, it is appropriate to consider what clients agree to pay their lawyers when a direct attorney-client relationship does exist.

69. Here, after arm's-length negotiations with Class Counsel, DASA agreed that Class Counsel would represent it on a contingency fee basis, not to exceed 40%. *See* DASA Decl., at ¶7. At the time this agreement was reached, DASA understood that a 40% contingency fee was the market rate. *Id*.

70. In fact, the typical fee agreement in similar royalty class actions in Oklahoma is a contingency fee of 40%. *See Reirdon v. Cimarex Energy Co.*, No. 16-cv-445-SPS (E.D. Okla. Jan. 29, 2020) (Doc. No. 132, at 14-15); *Chieftain Royalty Co. v. Marathon Oil Co.,* No. CIV-17-334-SPS (E.D. Okla. Mar. 6, 2019) (Doc. No. 120, at 15-17); *Reirdon v. Cimarex Energy Co.,* No. 16-CV-113-KEW (E.D. Okla. Dec. 18, 2018) (Doc. No. 105, at 16); *Cecil v. BP America Production,* No. 16-CV-410-KEW (E.D. Okla. Nov. 19, 2018) (Doc. No. 260, at 14); *Chieftain Royalty Co. v. XTO Energy, Inc.,* No. CIV-11-29-KEW (E.D. Okla. Mar. 27, 2018) (Doc. No. 231, at 17); *Reirdon*

v. XTO Energy, Inc., No. 6:16-CV-00087-KEW (E.D. Okla. Jan. 29, 2018) (Doc. No. 124, at 16); *see also Fitzgerald Farms, LLC v. Chesapeake Operating, L.L.*C., No. CJ-2010-38, 2015 WL 5794008, at *3 (Okla. Dist. Ct. Beaver Cty. July 2, 2015) (finding that, under Oklahoma law, "[i]n the royalty underpayment class action context, the customary fee is a 40% contingency fee."); *Bank of America, NA. v. El Paso Natural Gas Co.,* No. CJ-2004-45 (Okla. Dist. Ct. Washita Cty. August 30, 2017) ("In the royalty underpayment class action context, the evidence revealed the customary contingency fee is forty (40) percent."); *Strack, et al. v. Continental Oil, Inc.,* No. CJ-10-75 (Okla. Dist. Ct., Blaine County, Jul 13, 2018), Judgment and Order Approving Attorneys' Fees and Class Representatives' Case Contribution Award at ¶11(e) ("The prevailing customary fee in these types of royalty owner class actions is a contingency fee of 40% of the common fund...").

71. A fee agreement negotiated at arm's-length in advance is particularly relevant in a contingency case because it reflects the value of the service to be provided before the full difficulty and uncertainty of the case is known and while the risk of a loss still exists. *See Chieftain Royalty Co. v. Laredo Petroleum, Inc.*, No. CIV-12-1319-D (W.D. Okla. May 13, 2015) (Doc. No. 52 at 8) ("Class Representative negotiated at arm's-length and agreed to a forty percent (40%) contingency fee at the outset of this litigation, reflecting the value Class Representative placed on the future success of this Litigation.").

72. Another way of comparing the fee request to the market for comparable legal services is to consider awards in similar cases (*Johnson* factor #12). The 40% fee request in this case is consistent with what many federal and state courts in Oklahoma have awarded in other oil-and-gas royalty class actions.

73. In work done for the remand proceedings before Judge DeGiusti in the *Chieftain v. EnerVest* case, I recently reviewed the fee orders in Oklahoma state-court oil and gas royalty class actions going back to 1995. The most common fee award, by far, in those cases was 40% of the common fund. Of particular relevance, I identified thirteen (13) fee orders issued after the current Oklahoma class action fee statute, 12 O.S. §2023(G)(4), took effect in 2009, and for which the fee order explains the basis for the award. In every one of those cases, the court awarded fees in the amount of 40% of the common fund. ***See* Exhibit 2 (listing cases).** Those fee awards, made by ten different judges in cases filed in ten different counties, provide compelling evidence that Oklahoma judges across the state view a 40% fee award as the going rate in oil-and-gas royalty class action contingency fee cases.

74. Similarly, federal courts in Oklahoma have approved fee awards of 40% of the cash component of the common fund in oil-and-gas royalty class actions. *See Reirdon v. Cimarex Energy Co.*, No. 16-cv-445-SPS (E.D. Okla. Jan. 29, 2020) (Doc. No. 132); *Chieftain Royalty Co. v. Marathon Oil Co.,* No. CIV-17-334-SPS (E.D. Okla. Mar. 6, 2019) (Doc. No. 120); *Reirdon v. Cimarex Energy Co.*, No. 16-CV-113-KEW (E.D. Okla. Dec. 18, 2018) (Doc. No. 105); *Cecil v. BP America Production*, No. 16-CV-410-KEW (E.D. Okla. Nov. 19, 2018) (Doc. No. 260); *Chieftain Royalty Co. v. XTO Energy, Inc.*, No. CIV-11-29-KEW (E.D. Okla. Mar. 27, 2018) (Doc. No. 231); *Reirdon v. XTO Energy, Inc.*, No. 6:16-CV-00087-KEW (E.D. Okla. Jan. 29, 2018) (Doc. No. 124); *Chieftain Royalty Co. v. Laredo Petroleum, Inc.*, No. CIV-12-1319-D (W.D. Okla. May 13, 2015) (Doc. No. 52); *Chieftain Royalty Co. v. QEP Energy Co.*, No. CIV-11-212-R (W.D. Okla. May 31, 2013) (Doc. No. 182, at 2) (39% of the cash component).

75. It is important to note that the 40% figure reflects only the up-front cash component of the settlement. When one considers the full present value of the settlement, including the value

of the future benefits, the percentage fee is reduced to less than 22% of the common fund created by the class action.

76. The five remaining *Johnson* factors examine, in different ways, Class Counsel's dedication of its time, effort, skill, and commitment to the case. These factors are: (1) the time and labor required; (2) the novelty and difficulty of the question presented by the case; (3) the skill required to perform the legal service properly; (4) the preclusion of other employment by the attorneys due to acceptance of the case; and (7) any time limitations imposed by the client or the circumstances.

77. As noted earlier, these factors are less important in a common fund case (rather than a fee-shifting case) because the most important determinant of the lawyer's contribution—and therefore the most important factor in setting the fee—is the outcome the lawyer was able to achieve. *See Brown*, 838 F.2d at 456. However, a few of these factors deserve specific attention.

78. Having reviewed the history of this case and the docket, and having reviewed selected critical pleadings, filings, and orders, I find that the time and labor factor of the *Johnson* test supports approval of Class Counsel's fee request. Class Counsel invested significant time and money for more than two years of litigation with no guarantee of reimbursement or recovery. As experienced oil-and-gas class action litigators, Class Counsel knew exactly what needed to be done and what tasks were best calculated to advance the likelihood of certification and to marshal the proof needed to prevail in court or in a favorable settlement.

79. Under federal common law standards, there is no need for the Court to employ a lodestar cross-check to assess whether the "time and labor" factor has been met. The Tenth Circuit made clear in *Brown* that a cross-check is not required. What *Brown* instructs the judge to do is to

satisfy himself that the time and effort of Class Counsel instrumentally contributed to the result achieved for the Class Members. *Brown*, 838 F.2d at 456.

80. I don't think it can be seriously disputed that Class Counsel made a significant investment of time and labor in this case, instrumentally contributing to its successful conclusion. Class Counsel investigated the potential claims; filed the lawsuit; litigated three pre-answer motions seeking either dismissal or summary judgment; conducted discovery to obtain the information needed to seek class certification, prove their claims, and evaluate damages; and successfully used that information to negotiate an excellent settlement. These efforts have now spanned over two years and consumed thousands of hours of attorney time. Along the way, Class Counsel incurred nearly $115,000 in litigation expenses on the Class's behalf. *See* Joint Class Counsel Decl., at ¶67.

81. Should the Court be inclined to conduct a formal lodestar analysis, doing so would only confirm that Class Counsel's fee request is fair and reasonable. Class Counsel's lodestar in this case is approximately $1,221,330.00, based on a total of $1,001,497.50 in past hours and $219,832.50 in expected future hours. *See* Joint Class Counsel Decl., at ¶63; Ryan Whaley Decl,, at ¶¶11-12; Burrage Decl., at ¶9, 11. For the requested fee of $3,200,000.00, that works out to a multiplier of roughly 2.62, which is right in line with the multipliers approved—on an "abundance of caution" basis—in three oil-and-gas royalty class action settlements approved in this District in 2018 and 2019. *See, e.g.*, *Chieftain Royalty Co. v. Marathon Oil Co.,* No. CIV-17-334-SPS (E.D. Okla. March 8, 2019) (Doc. No. 120, at 23) (lodestar multiplier of 2.57); *Chieftain Royalty Co. v. XTO Energy, Inc.,* No. CIV-11-29-KEW (E.D. Okla. Mar. 27, 2018) (Doc. No. 231, at 25) (lodestar multiplier of 2.58); *Reirdon v. XTO Energy, Inc.,* No. 6:16-CV-00087-KEW (E.D. Okla. Jan. 29, 2018) (Doc. No. 124, at 23) (lodestar multiplier of 2.55).

82. The firms that brought this case and secured this settlement include firms that have been among the pioneers and the leaders in the field of class action royalty litigation. Having worked with all of them on multiple occasions, and based on my knowledge of their work in those cases, and having served as a consultant or expert in many other class actions, it is my opinion that they are excellent lawyers well-deserving of their reputation as being among the very best in the field.

83. The skill, experience, resources, and reputation of Class Counsel are critically important in high-stakes oil-and-gas-royalty class action litigation. This is no place for dabblers or dilettantes. Lawyers who take on big oil and gas companies seeking tens of millions of dollars in damages must be prepared for a long and expensive battle. They must also have the expertise and acumen needed to get the case certified as a class action despite the inevitable and often extraordinary efforts the defendant will make to keep that from happening. Moreover, the oil and gas defendant must know and appreciate that class counsel is sufficiently expert and resourced to not just survive but thrive in that environment. Any hint of weakness on the part of class counsel will embolden the defendant's procedural resistance and undermine settlement. To get top dollar in a settlement, class counsel has to be—and must be seen to be—as well-funded and as legally formidable as the oil and gas companies and the "big law" firms they retain.

84. It is my opinion that Class Counsel exhibit all of these qualities. They are experienced class action lawyers with a demonstrated ability and willingness to press their cases to their best possible end, including trial if needed. And because of that, they are well positioned to negotiate vigorously and secure high-quality settlements on behalf of the class members they are appointed to represent.

85. In conclusion, it is my opinion that a fee award of $3,200,000.00 would be fair and reasonable under Tenth Circuit federal common law standards, whether viewed under the POF approach or under the lodestar approach (either on its own or as a cross-check).

86. As explained in Paragraph 50, this Court does not need to apply Oklahoma's fee-calculation standards because the parties selected federal law in the Settlement Agreement. *See* SA, at ¶¶7.1, 11.8. But if Oklahoma law did apply, my opinion would be the same.

87. First, it is my opinion that the governing Oklahoma statute, 12 O.S. §2023(G), gives judges in Oklahoma discretion to use the POF method in common fund class actions.

88. Second, Oklahoma trial court judges consistently exercise that discretion to use the POF method when calculating class counsel's fee award in oil-and-gas royalty common fund class actions. In doing so, they repeatedly extol the comparative advantages of the POF method in the common fund setting.

89. Third, and as detailed above, Oklahoma trial court judges consistently set the POF fee award at 40% of the common fund.

90. Fourth, it is my opinion that Oklahoma fee-award law does not require a lodestar calculation, either as the base for the award or as a cross-check. Numerous Oklahoma trial court fee-award opinions explain that a lodestar analysis, while intended to provide an objective way to calibrate fee awards, actually distorts the calculation in common fund cases by punishing expertise, rewarding inefficiency, and creating an incentive to churn.

91. Fifth, to the extent Oklahoma trial courts have used a lodestar cross-check, they have approved multipliers higher than the one in this case. Since Section 2023(G) was enacted, Oklahoma courts have approved seven (7) lodestar multipliers in similar oil-and-gas royalty class actions. Those multipliers have averaged 2.96, including multipliers of 5 and 6.3. Thus, the

multiplier in this case of 2.62 is wholly consistent with what Oklahoma courts have done when they have applied Section 2023(G) in cases like this.

92. I have set forth my opinions on Oklahoma fee-award law and practice in a summary fashion in the paragraphs above because the parties opted for the federal-law standards. However, all of those opinions are fully developed in the declaration I submitted in *Chieftain Royalty Co. v. SM Energy Co., et al.,* in support of Plaintiff's Unopposed Motion to Certify Question to the Oklahoma Supreme Court, which I hereby adopt and incorporate as if set forth fully herein. *See* Case No. CIV-18-1255-D (Doc. No. 24-5).

Reimbursement of Litigation Expenses

93. Class Counsel seeks reimbursement of Litigation Expenses in an amount not to exceed $225,000. It is my opinion that the request is fair and reasonable and should be granted.

94. So far, Class Counsel has incurred roughly $115,000.00 in expenses and costs associated with litigating this action. *See* Joint Class Counsel Decl., at ¶69. Class Counsel will incur additional expenses associated with the final fairness hearing and the administration of the settlement. While Class Counsel does not know what those expenses will be, Class Counsel do not anticipate seeking reimbursement of more than $200,000.

95. Successfully prosecuting large class actions like this often requires the expenditure of millions of dollars. This is especially true in litigation against prominent and well-funded corporate defendants. Based on my discussions with Class Counsel regarding the Litigation and the expenses incurred, it is my opinion that these expenses were reasonable and necessary to achieve this outstanding Settlement.

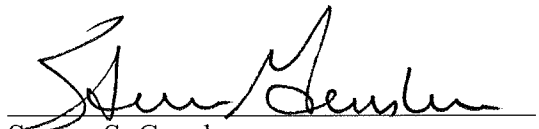
96. A recent study by a research team including Professor Geoffrey Miller confirms that courts have reimbursed litigation expenses in the vast majority of class action settlements

reported from 2009 through 2013. *See* Theodore Eisenberg et al., *Conference: Attorneys' Fees in Class Actions: 2009-2013*, 92 N.Y.U. L. REV. 937, 963 (2017). The median amount of expenses reimbursed in such cases was 1.71% of the total recovery and the mean amount of expenses reimbursed in such cases was 3.93% of the total recovery. *Id.* Here, the request for reimbursement falls well below the median and mean amounts reimbursed by other courts, as $225,000.00 (the highest amount Class Counsel will seek) would still represent only 1.5% of the $15,000,000 total value of the settlement.

97. This court has routinely reimbursed Class Counsel for their reasonable and necessary litigation expenses in similar cases. *See, e.g.*, *Reirdon v. Cimarex Energy Co.*, No. 16-cv-445-SPS (E.D. Okla. Jan. 29, 2020) (Doc. No. 133) (amount not to exceed $225,000); *Chieftain Royalty Co. v. Marathon Oil Co.,* No. CIV-17-334-SPS (E.D. Okla. Mar. 6, 2019) (Doc. No. 121) (amount not to exceed $350,000); *Reirdon v. Cimarex Energy Co.*, No. 16-CV-113-KEW (E.D. Okla. Dec. 18, 2018) (Doc. No. 104) (amount not to exceed $250,000). The reimbursement request in this case is for the same types of expenses and is on the low side of the range of expenses in cases like this.

98. For all of those reasons, it is my opinion that Class Counsel's Litigation Expenses should be reimbursed in an amount not to exceed $225,000.00

I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct.



Steven S. Gensler
February 21, 2020

Exhibit 1

STEVEN S. GENSLER
Gene and Elaine Edwards Family Chair in Law
University of Oklahoma College of Law
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ACADEMIC APPOINTMENTS

UNIVERSITY OF OKLAHOMA COLLEGE OF LAW
Gene and Elaine Edwards Family Chair in Law (2018-current)
Welcome D. & W. DeVier Pierson Professor (2009-2017)
President's Associates Presidential Professor (2006-current)
Professor (2005–current)
Associate Professor (2000-2005) (on leave 2003-2004)
Associate Dean for Research and Scholarship (2012-2015)

UNIVERSITY OF ILLINOIS COLLEGE OF LAW
Visiting Assistant Professor (1998-2000)

UNIVERSITY OF NEVADA LAS VEGAS, WILLIAM S. BOYD COLLEGE OF LAW
Visiting Professor (Fall 2017)

JUDICIAL FELLOWSHIPS

UNITED STATES SUPREME COURT
Supreme Court Fellow, Administrative Office of the U.S. Courts (2003-2004)

JUDICIAL CLERKSHIPS

THE HONORABLE DEANELL REECE TACHA
U.S. Court of Appeals, Tenth Circuit (Lawrence, KS)
Law Clerk (1992-1993)

THE HONORABLE KATHRYN H. VRATIL
U.S. District Court, District of Kansas (Kansas City, KS)
Law Clerk (1993-1994)

LAW PRACTICE

MICHAEL, BEST & FRIEDRICH, LLP (Milwaukee, WI)
Associate (1996-1998)

REINHART, BOERNER, VAN DUREN, NORRIS & RIESELBACH S.C. (Milwaukee, WI)
Associate (1994-1996)

EDUCATION

UNIVERSITY OF ILLINOIS COLLEGE OF LAW, J.D. *summa cum laude*, May 1992
Valedictorian (Class Rank: 1/189)
Editor-in-Chief, University of Illinois Law Review

UNIVERSITY OF ILLINOIS (URBANA-CHAMPAIGN), B.S. (Biology), June 1988

PUBLICATIONS

Books:

FEDERAL RULES OF CIVIL PROCEDURE: RULES AND COMMENTARY (Thomson Reuters/West)
- Comprehensive two-volume practice treatise on the Federal Rules of Civil Procedure
- Revised and updated edition published annually
- Annual editions to date: 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019

MOORE'S FEDERAL PRACTICE, Volume 11 (3d. ed. 2012) (with Jeffrey W. Stempel)
- Covering Summary Judgment under Rule 56
- Wrote new chapter for 3d Edition after Rule 56 was substantially revised in 2010
- Responsible for overseeing quarterly updates

THE 2015 AMENDMENTS TO THE FEDERAL RULES OF CIVIL PROCEDURE (Lexis/Nexis 2015) (monograph prepared and distributed as part of MOORE'S FEDERAL PRACTICE)

GILBERT'S LAW SUMMARY ON CIVIL PROCEDURE (West Academic Publishing) (added as new co-author for 19th edition) (with Rick Marcus and Tom Rowe)

Journal Articles:

The Vanishing 12-Person Civil Jury (with the Honorable Patrick E. Higginbotham and the Honorable Lee H. Rosenthal) (in progress)

The Million Dollar Diversity Docket (with Roger Michalski) (in progress)

Why Don't Lawyers Get on the Fast Track?: The Persistent Failure of Expedited Trial Programs in Federal Court (with Jason A. Cantone) (in progress)

Form Fights: Battles Over Content and Proportionality, 26 PRETRIAL PRACTICE & DISCOVERY 15 (Spring 2018) (with the Honorable Xavier Rodriguez)

Breaking the Boilerplate Habit in Civil Discovery, 51 AKRON L. REV. 683 (2017) (with the Honorable Lee H. Rosenthal) (Symposium on the impact of the 2015 Civil Rules Amendments)

Discovery: What the Form Are We Fighting For?, 80 TEX. B.J. 774 (Dec. 2017) (with the Honorable Xavier Rodriguez)

A Report from the Proportionality Roadshow, 100 JUDICATURE 14 (Winter 2016) (with the Honorable Lee H. Rosenthal)

From Rule Text to Reality: Achieving Proportionality in Practice, 99 JUDICATURE 43 (Winter 2015) (with the Honorable Lee H. Rosenthal)

Four Years After Duke: Where Do We Stand on Calibrating the Pretrial Process?, 18 LEWIS & CLARK LAW REVIEW 643 (2014) (with the Honorable Lee H. Rosenthal) (Symposium honoring Judge Mark Kravitz)

Measuring the Quality of Judging: It All Adds Up to One, 48 NEW ENGLAND LAW REVIEW 475 (2014) (with the Honorable Lee H. Rosenthal) (Symposium on "Benchmarks: Measurements for Evaluating Judicial Productivity")

The Reappearing Judge, 61 KANSAS LAW REVIEW 849 (2013) (with the Honorable Lee H. Rosenthal) (Symposium on "Advocacy under the Federal Rules of Civil Procedure")

Ed Cooper, Rule 56, and Charles E. Clark's Fountain of Youth, 46 UNIVERSITY OF MICHIGAN JOURNAL OF LAW REFORM 593 (2013)

Managing Summary Judgment, 43 LOYOLA UNIVERSITY CHICAGO LAW JOURNAL 517 (2012) (with the Honorable Lee H. Rosenthal) (Symposium on the 25th Anniversary of the Supreme Court's 1986 Summary Judgment trilogy)

- *Reprinted in* 62 DEF. L.J. 1 (2013)

Special Rules for Social Media Discovery? 65 ARKANSAS LAW REVIEW 7 (2012) (Symposium on "Facebook and the Law")

Judicial Case Management: Caught in the Crossfire, 60 DUKE LAW JOURNAL 669 (2010) (Symposium publishing papers selected from the 2010 Duke Conference on Civil Litigation)

Oklahoma's New E-Discovery Rules, 81 OKLAHOMA BAR JOURNAL 2427 (Nov. 2010)

Must, Should, Shall, 43 AKRON LAW REVIEW 1141 (2010) (Symposium issue publishing papers selected for presentation at the 2010 AALS Section on Litigation program on "The Future of Summary Judgment")

The Other Side of the CAFA Effect: An Empirical Analysis of Class Action Activity in the Oklahoma State Courts, 58 KANSAS LAW REVIEW 809 (2010) (Symposium on Class Actions)

A Bull's-Eye View of Cooperation in Discovery, 10 SEDONA CONFERENCE JOURNAL 363 (Fall 2009 Supp.) (invited contribution to Special Edition on The Sedona Conference Cooperation Proclamation)

Some Thoughts on the Lawyer's E-volving Duties in Discovery, 36 NORTHERN KENTUCKY UNIVERSITY LAW REVIEW 521 (2009) (invited contribution to Symposium on E-Discovery)

▪ *Reprinted in* 60 DEF. L.J. 1 (2011)

Justness! Speed! Inexpense! An Introduction to The Revolution of 1938 Revisited: The Role and Future of the Federal Rules, 61 OKLAHOMA LAW REVIEW 257 (2008) (Introduction to AALS Civil Procedure Section 2008 Annual Meeting Symposium)

Driving Misjoinder: The Improper Party Problem in Removal Jurisdiction, 57 ALABAMA LAW REVIEW 779 (2006) (with Laura J. Hines)

Diversity Class Actions, Common Relief, and the Rule of Individual Valuation, 82 OREGON LAW REVIEW 295 (2003)

Class Certification and the Predominance Requirement under Oklahoma Section 2023(B)(3), 56 OKLAHOMA LAW REVIEW 289 (2003)

Bifurcation Unbound, 75 WASHINGTON LAW REVIEW 705 (2000)

Prejudice, Confusion, and the Bifurcated Civil Jury Trial: Lessons from Tennessee, 67 TENNESSEE LAW REVIEW 653 (2000) (invited contribution to Symposium: Communicating with Juries)

Wrongful Discharge for In-House Attorneys: Holding the Line Against Lawyers' Self-Interest, 1991 UNIVERSITY OF ILLINOIS LAW REVIEW 515 (Student Note)

Other Publications:

Survey Results: Why Won't Lawyers Get on the Fast Track?, Volume 4, Issue 8, NYU Civil Jury Project Newsletter (August 2019)

Second Circuit Distinguishes Abandonment from Default in Summary Judgment, 99 JUDICATURE 45 (2015) (brief case note)

A Tribute to Robert Spector: "It Started With Jurisdiction", 63 OKLAHOMA LAW REVIEW i (2011)

FEDERAL RULES OF CIVIL PROCEDURE: 2007 STYLE PROJECT COMPARISON CHARTS (West)
▪ Companion publication to the 2008 edition of treatise listed above

SEALED SETTLEMENT AGREEMENTS IN FEDERAL DISTRICT COURT, Federal Judicial Center (2004) (with Robert Timothy Reagan, Shannon R. Wheatman, Marie Leary, Natacha Blain, George Cort, and Dean Miletich)

Developments in the Federal Rules of Civil Procedure, Association of American Law Schools Civil Procedure Newsletter (2003, 2005, 2006, 2007, 2008)

PROFESSIONAL AND PUBLIC SERVICE

AMERICAN LAW INSTITUTE
- Council (2015 – present)
- Member (2006 – present)
- Adviser for Restatement (Third) of Conflict of Laws
- Members Consultative Group for the Principles of Aggregate Litigation Project
- Members Consultative Group for Restatement (Third) U.S. Law of International Arbitration

UNITED STATES JUDICIAL CONFERENCE ADVISORY COMMITTEE ON CIVIL RULES
- Member (2005 – 2011)
- Appointed June 2005 by Chief Justice William H. Rehnquist
- Reappointed August 2008 by Chief Justice John G. Roberts, Jr.

UNITED STATES JUDICIAL CONFERENCE FEDERAL-STATE JURISDICTION COMMITTEE
- Lead Academic Consultant (2017 – present)

NATIONAL CONFERENCE OF BAR EXAMINERS, MBE CIVIL PROCEDURE DRAFTING COMMITTEE
- Invited participant (Summer 2017, Winter 2017)
- Member (Spring 2018 – present)

LOCAL RULES COMMITTEE, UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA
- Member (2008 – present)

OKLAHOMA STATE BAR ASSOCIATION COMMITTEE ON CIVIL PROCEDURE
- Member (2005 - present)
- Vice-Chair (2009 - 2017)
- Chair, E-Discovery Subcommittee (2009)

OKLAHOMA UNIFORM JURY INSTRUCTION COMMITTEE (CIVIL)
- Appointed March 21, 2016 by Oklahoma Supreme Court Chief Justice John F. Reif

THE SEDONA CONFERENCE
- Member (2008 – present)
- Advisory Board (April 2012 – present)
- Working Group 1: Electronic Discovery
- Working Group 6: International Electronic Information Management, Discovery and Disclosure
- *Founding Member*: ROI Project for Information Asset Management (exploratory group to identify principles and best practices for maximizing "information assets")

CIVIL JURY PROJECT (NYU LAW SCHOOL)
- Academic Advisor (2016-present)

AMERICAN BAR FOUNDATION
- Fellow (2016-present)

GUIDELINES AND PRACTICES FOR IMPLEMENTING THE 2015 DISCOVERY AMENDMENTS TO ACHIEVE PROPORTIONALITY

- Co-Reporter (with the Honorable Lee H. Rosenthal) (2014-2017)
- Project Sponsored by the Duke Center for Judicial Studies

2010 CONFERENCE ON CIVIL LITIGATION ("DUKE CONFERENCE")

- Member, Planning Committee (2009-2010)

ASSOCIATION OF AMERICAN LAW SCHOOLS SECTION ON CIVIL PROCEDURE

- Executive Committee Chair (2007)
- Executive Committee Member (2005 - 2009)

PRESENTATIONS

Current Issues in Federal Procedure and Jurisdiction

- Judicial Retreat, U.S. District Court, W.D. Okla.
- October 21, 2019, Watonga, OK

Why Won't Lawyers Get on the Fast Track? The Persistent Failure of Expedited Trial Programs in Federal Court

- OU College of Law Work-in-Progress Series
- October 14, 2019, Norman, OK

Report From the Washington, D.C. Bench-Bar Group Meeting

- Bolch Judicial Institute (Duke Law) Program on "Evaluating the 2015 Rule 26 Discovery-Proportionality Amendments and Bolch-Duke Guidelines and Best Practices"
- June 20, 2019, Arlington, VA

Why Won't Lawyers Get on the Fast Track? The Persistent Failure of Expedited Trial Programs in Federal Court

- NYU Civil Jury Project Colloquium
- April 24, 2019, New York, NY

So You Want to Be a Class Action Lawyer? (Recent Changes to Fed. R. Civ. P. 23)

- Presenter and Program Moderator
- Federal Bar Association, OKC Chapter, Class Action Seminar
- December 12, 2018, Oklahoma City, OK

Electronic Discovery: Tips from a Professor

- OELA Annual Seminar
- December 7, 2018, Oklahoma City, OK

Special Focus Meeting: Bench-Bar Experiences with the 2015 Discovery Proportionality Amendments

- Program Facilitator
- Bolch Judicial Institute, Duke Law School
- July 13, 2018, Washington, D.C.

Breaking the Boilerplate Habit in Civil Discovery
- Akron Law Review Symposium on Civil Discovery
- April 6, 2018, Akron, OH

Sedona Conference eDiscovery Negotiation: Practical Cooperative Strategies
- Faculty Member
- February 22-23, 2018, New York, NY

Technology Assisted Review (TAR) Best Practices
- Program Moderator
- Duke Law Center for Judicial Studies, Bench-Bar-Academy Distinguished Lawyers' Series
- September 8-9, 2017, Arlington, VA

Federal Rules Update
- 2017 Judicial Conference of the Fifth Circuit
- May 9, 2017, Grapevine, TX

The Virtual Reality: Litigating in the 21st Century
- Kansas Legal Revitalization Conference
- February 2, 2017, Kansas City, MO

Big Deal or Big Distraction? Which Recent FRCP Developments Really Matter and Why
- Kansas Legal Revitalization Conference
- February 2, 2017, Kansas City, MO

The New Rules for E-Discovery: What Do They Impact?
- Kansas Legal Revitalization Conference
- February 1, 2017, Kansas City, MO

How E-*Discovery Brought* All *Discovery Back to Its Senses*
- University of Florida College of Law, E-Discovery Distinguished Speaker Series
- October 10, 2016, Gainesville, FL

The 2015 Amendments to the Federal Rules of Civil Procedure
- Westfield Insurance Annual Counsel Meeting
- August 9, 2016, Westfield Center, OH

The 2015 Amendments to the Federal Rules of Civil Procedure
- Eighth Circuit Judicial Conference
- May 4, 2016, Rogers, AR

Federal Rules Amendment Process: How Does It Work? Trends and Predictions.
- Wichita Bar Association Civil Practice CLE
- April 21, 2016, Wichita, KS

Sedona Conference eDiscovery Negotiation: Practical Cooperative Strategies

- Faculty Member
- March 1-2, 2016, Washington, D.C.

IAALS Fourth Civil Justice Reform Summit
- Panelist and Planning Committee Member
- February 24-25, 2016, Denver, CO

ABA "Roadshow" on Proportionality and the New 2015 Rules
- Fall 2015 through Spring 2016
- Presentations at U.S. Courthouses in 17 cities (New York, Philadelphia, Newark, St. Louis, Atlanta, Chicago, Washington D.C., Los Angeles, San Francisco, Denver, Phoenix, Dallas, Miami, San Diego, Seattle, Boston, Detroit)

What Do the 2015 Amendments to the Federal Rules of Civil Procedure Really Mean for Judges and Lawyers
- 2016 Southern District of Georgia Attorney Advisory Committee Meeting
- January 29, 2016, Amelia Island, FL

The 2015 Amendments to the Federal Rules of Civil Procedure
- Federal Bar Association, Federal Practice Series
- November 24, 2015, Oklahoma City, OK

Proportionality and the New 2015 Rules
- Judicial Training Symposium co-sponsored by Federal Judicial Center and the Electronic Discovery Institute
- October 14, 2015, New Orleans, LA

Proportionality and the New 2015 Rules
- ABA Section on Litigation Fall Leadership Meeting
- October 9, 2015, Memphis, TN

The 2015 Amendments to the Federal Rules of Civil Procedure
- Kansas City Metropolitan Bar Association Bench, Bar, & Boardroom Conference
- May 15, 2015, Branson, MO

Proportionality and the New 2015 Rules
- National Conference for U.S. Magistrate Judges
- April 21, 2015, Seattle, WA
- July 9, 2015, Boston, MA

Proportionality is Officially Part of Discovery: Now What?
- Washington & Lee University School of Law Faculty Speaker Series
- April 6, 2015, Lexington, VA

Sedona Conference eDiscovery Negotiation: Practical Cooperative Strategies
- Faculty Member
- March 4-5, 2015, Atlanta, GA

Duke Center for Judicial Studies Conference on Implementing Discovery Proportionality Standard
- Faculty Member and Panelist
- November 13-14, 2014, Arlington, VA

Four Years After Duke: Where Do We Stand on Calibrating the Pretrial Process?
- Civil Rules Advisory Committee Meeting; Program Honoring Judge Mark Kravitz
- April 10, 2014, Portland, OR

Hot Topics in Discovery Sanctions: Spoliation and Rule 26(g)
- Judges Retreat, U.S. District Court for the Western District of Missouri
- March 7, 2014, Kansas City, MO

Sedona Conference Cooperation Training Program
- Faculty Member and Panelist
- February 12-13, 2014, Chicago, IL

Amendments to Rule 45
- Presentation to District Judges of the Western District of Oklahoma
- December 2, 2013, Oklahoma City, OK

Cooperation in Practice
- Georgetown Law Advanced eDiscovery Institute
- November 21, 2013, Washington, D.C.

Pretrial Bench Presence
- New England Law School Symposium: "Benchmarks: Evaluating Measurements of Judicial Productivity"
- November 8, 2013, Boston, MA

Unlocking E-Discovery: Educational Summit for State Court Judges
- Faculty member for e-discovery program for state-court judges from around the country.
- Co-hosted by the National Judicial College and the Institute for the Advancement of the American Legal System ("IAALS")
- September 19-20, 2013, Denver, CO

Cooperation and Professional Responsibility
- The Sedona Conference Cooperation Training Program
- February 21, 2013, Phoenix, AZ

Search Wars: Predictive Coding and the Battle for Control of the Search Process
- University of Kansas School of Law Symposium: "Advocacy Under the Federal Rules of Civil Procedure After 75 Years"
- November 9, 2012, Lawrence, KS

New Approaches to Civil Case Management from Around the Country
- Workshop for Judges of the Fifth Circuit

- May 10, 2012, Santa Fe, NM

Ed Cooper, Sherpa Guides, and Procedural Discretion
- Civil Rules Advisory Committee Meeting, Program Recognizing Reporter Ed Cooper
- March 22, 2012, Ann Arbor, MI

Effective Case Management
- Judges Retreat, U.S. District Court for the District of Kansas
- February 17, 2012, Topeka, KS

Closing the Guidance Gaps Under the Federal Rules
- Presented at the William S. Boyd School of Law, University of Nevada Las Vegas
- January 26, 2012, Las Vegas, NV

Electronic Discovery and the Sensible Harvest
- Boston E-Discovery Summit 2011
- December 8, 2011, Boston, MA

Social Media and the Continuing Evolution of the Discovery Rules
- University of Arkansas School of Law Symposium: "Facebook and the Law"
- November 4, 2011, Fayetteville, AR

Discovery After Iqbal: Where Do We Go From Here?
- Multidistrict Litigation Panel Transferee Judge's Conference
- November 1-2, 2011, West Palm Beach, FL

Summary Judgment and Case Management: Each in Service of the Other
- Seattle University School of Law Colloquium: "25th Anniversary of the Summary Judgment
Trilogy: Reflections on Summary Judgment"
- September 16, 2011, Seattle, WA

Civil Rules and Appellate Rules: What's New and What's on the Horizon
- Judicial Conference of the Fifth Circuit
- May 3-4, 2011, San Antonio, TX

The Rulemaking Response to Twombly *and* Iqbal
- University of Baltimore School of Law Colloquium Presentation
- April 15, 2011, Baltimore, MD

Knowledge in the Public Interest: Consideration of Incidents Where Scientific and Technical Knowledge Is Kept From the Public Because of Sealed Settlements and Other Restrictive Arrangements
- Panelist, National Academy of Science, Committee on Science, Technology, and Law
- April 11, 2011, Washington, DC

Complex Litigation XIII: The Future of Civil Litigation 2
- Panelist, 13th Annual Sedona Conference on Complex Litigation

- April 7-8, 2011, Del Mar, CA

The 2010 Amendments to Rule 26 and Rule 56
- Kansas Association of Defense Counsel Annual Meeting
- December 3, 2010, Kansas City, MO

The 2010 Amendments to Rule 56
- LEXIS/NEXIS Webinar
- November 23, 2010

Incorporating E-Discovery Rules Into State Practice
- Panelist, Tulsa County Bar Association CLE Program on Electronic Discovery
- November 12, 2010, Tulsa, OK

Federal Judicial Roundtable on Electronic Discovery
- Moderator, Oklahoma Bar Association Symposium on Electronic Discovery
- November 5, 2010, Oklahoma City, OK

Incorporating E-Discovery Rules Into State Practice
- Panelist, Oklahoma Bar Association Symposium on Electronic Discovery
- November 5, 2010, Oklahoma City, OK

Report from the 2010 Conference on Civil Litigation: Where We Are and Where We Are Going
- Panelist, Sedona Conference Webinar Series Presentation
- June 22, 2010

Cooperation in Discovery: A 90-Year View
- Northern Illinois University Law Review Symposium: "What It Means to Be a Lawyer in the Digital Age"
- April 16, 2010, DeKalb, IL

The Future of Civil Litigation: Legislative and Behavioral Changes
- Panelist, 12th Annual Sedona Conference on Complex Litigation
- April 8-9, 2010, Phoenix, AZ

Federal Rules of Civil Procedure: What's Coming in December 2010
- Co-presenter (with The Honorable Lee H. Rosenthal)
- DRI Product Liability Conference
- April 7, 2010, Las Vegas, NV

Codifying Mediation 2.0
- Panelist, The Ohio State Journal of Dispute Resolution Symposium 2010
- February 5, 2010, Columbus, OH

Must, Should, Shall
- AALS Section on Litigation Program
- January 10, 2010, New Orleans, LA

Procedure a la Carte
- AALS Section on Civil Procedure
- January 9, 2010, New Orleans, LA

E-Discovery: Searching the Virtual File Cabinets
- Presenter, NBI Seminar
- Forthcoming November 13, 2009, Oklahoma City, OK

Federal Rules of Civil Procedure: Changes Effective December 1, 2009
- OBA/CLE Webcast Seminar
- November 10, 2009

The First Year of the Cooperation Proclamation
- Panelist, The Sedona Conference Webinar
- November 4, 2009

The Other Side of the CAFA Effect: An Empirical Analysis of Class Action Activity in the Oklahoma State Courts
- Kansas Law Review 2009 Symposium: "Aggregate Justice: Perspectives 10 Years After *Amchem* and *Ortiz*"
- October 30, 2009, Lawrence, KS

Judicial Management Strategies to Encourage Cooperative, Non-Adversarial Discovery
- Workshop for U.S. Magistrate Judges II
- July 15 and 16, 2009, Milwaukee, WI

Some Thoughts on the Lawyer's E-volving Duties in Discovery
- Northern Kentucky Law Review Symposium on E-Discovery
- February 28, 2009, Cincinnati, OH

Privilege Waiver Under New Federal Rule of Evidence 502
- Presenter, NBI Seminar: *Keeping Up with E-Discovery*
- November 13, 2008, Oklahoma City, OK

E-discovery in Oklahoma
- Presented to the Kingfisher County Bar Association
- August 28, 2008, Kingfisher, OK

The Revolution of 1938 Revisited: The Role and Future of the Federal Rules
- Moderator, AALS Civil Procedure Section Program
- January 4, 2008, New York, NY

E-discovery: New Adventures in Client Babysitting?
- Presented at the Kansas University School of Law
- October 19, 2007, Lawrence, KS

Bell Atlantic v. Twombly: Pleading Standards and Court Access
- "Brown bag" presentation at the University of Oklahoma College of Law
- June 20, 2007, Norman, OK

What's Coming Next? A Look Into the Rules Amendment Pipeline
- Presented at *Winning the Federal Case Before Trial*
- December 15, 2006, Oklahoma City, OK

Recent Developments in Federal Subject Matter Jurisdiction
- Presented at *Winning the Federal Case Before Trial*
- December 9, 2005, Oklahoma City, OK

Driving Misjoinder: The Improper Party Problem in Removal Jurisdiction
- "Brown bag" presentation at the University of Oklahoma College of Law
- May 25, 2005, Norman, OK

The Relatively Underguided Erie Analysis
- University of Oklahoma College of Law
- February 9, 2005, Norman, OK

Federal Civil Rules Amendments: A Look Into the Pipeline
- Presented at *Winning the Federal Case Before Trial*
- January 14, 2005, Dallas, TX

Discretionary Dismissal Based on Post-Jurisdictional Events
- Presented to United States Judicial Conference Committee on Federal-State Jurisdiction
- June 10, 2004, New York City, NY

Oil and Gas Class Actions: Issues and Outcomes in Oklahoma
- Presented at the *Eugene Kunz Conference on Natural Resources Law and Policy*
- November 2002, Oklahoma City, OK

UNIVERSITY OF OKLAHOMA SERVICE

Member, Faculty Appeals Board (2012-2016)
Research Liaison, Office of the Vice President for Research (2012-2015)
Member, Small Executive Committee, Faculty Senate (2002-2003)
Member, Faculty Senate (2001-2002)
Chair, Campus Disciplinary Council I (2007-2009)
Chair, Campus Disciplinary Council II (2001-2002)

UNIVERSITY OF OKLAHOMA COLLEGE OF LAW SERVICE

Chair, Committee A (2019-2020)
Member, Committee A (2018-2019)
Member, Committee on Endowed Positions (2017)
Chair, Scholarship and Creative Activity Strategic Planning Committee (2012-2015)

Member, New Programs Committee (2012-2015)
Chair, Foreign Studies Program Committee (2011-2015)
Director, Oxford Summer Program (2011-2015)
Chair, Curriculum Committee (2016-2017)
Member, Curriculum Committee (2013-2014)
Member, Curriculum Committee (2011-2012)
Member, Committee on Research and Scholarship (2011-2016)
Chair, Committee A (2009-2010)
Member, Dean Search Committee (2009-2010)
Member, Committee A (2008-2009)
Faculty Advisor, Oklahoma Law Review (2002-2003, 2004-2007, 2011-2018)
Chair, Mentoring Study Committee (2005-2006)
Chair, Code of Academic Responsibility Appeals Board (2004-2005; 2015-2017)
Chair, Academic Appeals Board (2015-2017)
Member, Externship Subcommittee (2004-2005)
Chair, Personnel Committee (2006-2007)
Member, Personnel Committee (2002-2003)
Member, Personnel Committee (2000-2001)
Member, Competitions Committee (2001-2003)
Member, Legal Writing Committee (2001-2002)
Member, Judicial Clerkships Program (2000-2010)
Faculty Advisor, Phi Alpha Delta (2001-2003)

BAR MEMBERSHIPS

United States Supreme Court (2003)
State of Wisconsin (1992)
Eastern District of Wisconsin (1992)
Western District of Wisconsin (1993)
District of Colorado (1995)

Exhibit 2

Exhibit 2

Taylor v. Chevron/Texaco Corp., CJ-2002-104 (Texas Cty., Okla. 2009) (Riffe, J.)

Brown v. Citation Oil & Gas Corp., CJ-04-217 (Caddo Cty., Okla. 2009) (Van Dyck, J.)

Mitchusson v. Exco Resources, Inc., CJ-2010-32 (Caddo Cty., Okla. 2012) (Hill, J.)

Holcomb v. Chesapeake Energy Corp., CJ-2011-6 (Roger Mills Cty., Okla. 2013) (Haught, J.)

Drummond v. Range Resources Corp., CJ-2010-510 (Grady Cty., Okla. 2013) (Van Dyck, J.)

DSR Investments LLC v. Devon Energy Prod. Co., LP, CJ-11-12 (Dewey Cty., Okla. 2013) (Linder, J.)

Cornett v. Samson Resources Co, CJ-09-81 (Dewey Cty., Okla. 2013) (Linder, J.)

Cecil v. Ward Petroleum Corp., CJ-2010-462 (Grady Cty., Okla. 2014) (Hill, J.)

Krug v. Helmerich & Payne, Inc., CJ-98-06012 (Tulsa Cty., Okla. 2014) (Sellers, J.)

Fitzgerald Farms, LLC v. Chesapeake Operating, L.L.C., CJ-2010-38 (Beaver Cty., Okla. 2015) (Parsley, J.)

Mahaffey v. Marathon Oil Co., CJ-04-581E (Stephens Cty., Okla. 2016) (Graham, J.)

Bank of America, N.A. v. El Paso Natural Gas Co., CJ-2004-45 (Washita Cty., Okla. 2017) (Kelly, J.)

Strack v. Continental Resources, Inc., CJ-10-75 (Blaine Cty., Okla. 2018) (Hladik, J.)