

**IN THE DISTRICT COURT OF TEXAS COUNTY
STATE OF OKLAHOMA**

MARVIN TAYLOR,)
MARGARET SHEPPARD AND)
ALESEN SHEPPARD)
FOR THEMSELVES AND ALL OTHERS)
SIMILARLY SITUATED,)
)
PLAINTIFFS,)
)
)
vs.)
)
CHEVRON TEXACO CORPORATION,)
TEXACO, INC.;)
TEXACO EXPLORATION AND PRODUCTION, INC.;)
CHEVRON U.S.A., INC.,)
FOR ITSELF AND AS GUARANTOR OF TEXACO)
EXPLORATION AND PRODUCTION, INC.; AND)
FOUR STAR OIL & GAS COMPANY)
)
DEFENDANTS.)

CASE No. CJ-2002-104

**TEXAS COUNTY
FILED
DEC 22 2009
KAREN PARISH
COURT CLERK
By _____ Deputy**

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

This matter comes on this 22nd day of December, 2009, on Class Representatives' and Class Counsel's motion for attorney fees, litigation expenses and Class Representatives fee. All named parties were present and represented by counsel. After reviewing the motion and all related pleadings, having reviewed the evidence submitted, having heard the testimony and arguments presented today, and being fully advised in the premises, **THE COURT FINDS AND ORDERS AS FOLLOWS:**

Notice and Objections:

1. Notice of this hearing was properly mailed to the Class Members with known valid mailing addresses and was published as required by this Court's previous order (see Affidavit of Notice previously filed with the Court). The Court previously approved such notice and now finds that the notice to the Class of this hearing is proper and sufficient under

12 Okla. Stat. § 2023 (E), the Due Process Clause of the United States Constitution and the Due Process Clause of the Oklahoma Constitution.

2. The Court notes that with over 17,000 Class Members, only one (1) person filed an objection. The one (1) Class Member objector objected to the attorney fee request only. There were no objections to reimbursement of expenses that were incurred on behalf of the Class or the requested award of the Class Representative fee. The Court notes that the one objection to the attorney fee was neither made in conformity with the requirements set forth in the Notice nor did he appear at the hearing or submit any evidence for the Court to consider. As recently explained by the Oklahoma Court of Appeals in *Velma-Alma Independent School Dist. No. 15 v. Texaco, Inc.*, 2007 OK CIV APP 42, 162 P. 3d 238, ¶13, while written comments and objections can be submitted by class members, those class members must file objections in compliance with the order and notice of the settlement court, state their intent to appear at the fairness hearing, and appear **in person** or through their disclosed counsel at the hearing for their objection to be preserved.

Class Counsel Fees:

3. Not including Class Counsel's involvement in the Prior Litigation which began as early as 1997, Class Counsel's efforts in this lawsuit began in 2002 with an investigation that led to the filing of this lawsuit. Over the past seven years Class Counsel conducted extensive discovery, motion practice and other demanding prosecution of this case. The issues in this case have been aggressively advanced throughout the history of this case. A further overview of the history of this case can be gleaned from the Court Clerk's docket sheet.

4. Class Counsel and the Class Representatives have devoted thousands of hours of time and effort, and have paid large sums of money, to achieve a fair and reasonable settlement for the benefit of the Class. Class Counsel and the Class Representatives have borne the hardships of the litigation and the risk of potential loss solely on their own shoulders. To date, Class Counsel and the Class Representatives have received no compensation for their efforts or reimbursement of their expenses. Class Counsel and the Class Representatives now request that the contingent fee and expense reimbursement contract they negotiated be extended to the Class.

5. Class Counsel have made substantial time and labor commitments which have now inured to the financial benefit of the Plaintiff Class and which have resulted in the creation of a Common Fund of \$12,000,000.00, plus accrued interest.¹

6. Under the Common Fund Doctrine, and in particular in a "class action" (which is one type of action that can create a common fund), the Court has the authority to extend

¹ The Common Fund Doctrine is well recognized by the Oklahoma Supreme Court (as well as the United States Supreme Court). If the plaintiff and/or his counsel have **created, preserved, protected, or increased a common fund (or common property), or have brought into court a fund in which others may share with him**, a court, in the exercise of equitable jurisdiction, may order the allowance of attorney fees and litigation expenses to counsel.

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

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

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

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

contingency fee agreements entered into between the Class Representative and Class Counsel to the entire Class.

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

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

7. This Court recognizes the importance of contingent fees in our judicial system, especially in class actions.

Although contingent fee contracts are subject to restrictions . . . such agreements have generally been enforced unless the contract is unreasonable. **Often contingent fee agreements are the only means possible for litigants to receive legal services ---- contingent fees are still the poor man's key to the courthouse door. The contingent fee system allows persons who could not otherwise afford to assert their claims to have their day in Court.** [Emphasis added. Footnotes omitted.] *Sneed v. Sneed*, 1984 OK 22, ¶3, 681 P.2d 754.

8. *Newberg on Class Actions* §14:6 (4th ed. 2002) recognizes that it is appropriate to award an attorney's fee based on a percent of the value of the common fund established for the benefit of the class.

9. A review of other Oklahoma District Courts' orders reveals similar sound logic. In *Bridenstine v. Kaiser-Francis, et al.*, Case No. CJ-2000-1, District Court of Texas County, State of Oklahoma, ¶3, the Honorable Ronald Kincannon explained his rationale for using the percentage of fund method for determining the appropriate attorney's fee:

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

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

In *Brumley v. ConocoPhillips*, Case No. CJ-2001-5, District Court of Texas County, Oklahoma, Judge Zigler stated additional rationales for awarding the full percentage fee:

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

* * *

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

Emphasis added.

10. The reasoning of the above-quoted Oklahoma courts on the award of attorney fees in cases such as the present action is compelling, and this Court adopts their reasoning in this

case. The Court will not reduce Class Counsel's percentage of fees from the common fund because of the success they achieved. To do so would effectively penalize Class Counsel for their success in this case and thereby restrict later access to the courthouse for potential class members in other cases who look to effective lawyers like Class Counsel in this case as their keys to the courthouse doors.

11. The Court finds that Class Counsel and the Class Representatives entered into contingency fee agreements whereby Class Counsel agreed to prosecute this action in exchange for receiving a fee of 40% of the gross recovery for the Class plus reimbursement of litigation expenses.

12. The Court finds that the 40% contingency fee percentage contained in the agreement between Class Counsel and the Class Representatives is within the typical range of contingency fee percentages for oil and gas class action litigation approved in this State.

13. The Court finds: (a) that the 40% contingency fee agreement between Class Counsel and the Class Representatives is fair and reasonable and should be, and is hereby, approved and extended to the members of the Class, and (b) that based upon the foregoing factors and reasoning, as well as the additional analysis described below, an attorney fee award of 40% of the Settlement Proceeds (as defined in Settlement Agreement), is a fair and reasonable amount of compensation to Class Counsel for establishing the Common Fund.

14. The Court has reviewed the detailed time records submitted by Class Counsel and finds that the time reflected in the record (in excess of 8,250 hours) was reasonably expended for the benefit of the Class. The Court has also reviewed the hourly rates of Class Counsel as set forth in the record and finds them to be reasonable and within the acceptable range in the

legal community for this type of legal services. Thus, the Court finds the base “lodestar” fees in this case (i.e., hours X rates, before any enhancement consideration) to be just over \$2,725,000.00. Under a lodestar approach, the Court is then required to consider the appropriateness of a fee enhancement.

15. The Court considered the basic guidelines established by the Oklahoma Supreme Court set forth in *State ex rel. Burk v. City of Oklahoma City*, 1979 OK 115, 598 P.2d 659.² In *Burk*, the Supreme Court enunciated twelve factors to be considered by the District Court in fixing fees under the lodestar approach.³

- A. Time and labor required. Counsel have made substantial time and labor commitments which have now inured to the financial benefit of the Plaintiff Class.
- B. The novelty and difficulty of the question. Class action issues are known to be difficult and vigorously contested. Furthermore, the oil and gas royalty issues involved in this case are also very complex.
- C. The skill requisite to perform the legal services properly. The unique nature of this case, coupled with the issues, mandated that the Class be represented by highly skilled counsel. To prosecute these claims against a large corporate defendant represented by highly capable defense counsel with extensive resources necessitated assembling a team of Class Counsel skilled in oil and gas litigation, as well as details of complex litigation and knowledge of Chevron’s historic payment practices. Counsel’s qualifications, skills and experience are well known throughout the oil and gas legal community. Class Counsel are certainly highly skilled and capable counsel.
- D. The preclusion of other employment. Class Counsel are engaged in the ongoing practice of law. Had Class Counsel not committed their resources to this case, Class Counsel could have accepted other matters, but did not. The prosecution of this case has very substantially reduced Class Counsel’s opportunity for employment in other matters.

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

³ The Court notes that statutorily these are the same factors that must be considered for attorneys fees motions filed after November 1, 2009. *See*, 12 O.S. §2023(G), effective 11/1/09.

- E. The customary fee. These types of cases (oil and gas class action cases), are typically handled on a contingent fee basis. The fee percentage in these types of cases is typically 40% of the gross fund.
- F. Whether the fee is fixed or contingent. Class Counsel entered into contingency fee agreements with the Class Representatives that provide for an attorneys' fee of 40% of the gross consideration received, as discussed in detail above. Counsel for the Class have represented the Class with vigor and without prior compensation of any kind for their time and have advanced hundreds of thousands of dollars of litigation expenses out of their own pockets.
- G. Time limitations imposed by client or circumstances. Numerous time limitations were imposed on Class Counsel throughout the course of the proceedings. A case of the size and complexity existing here required the commitment of a large percentage of the total time and resources of the firms of Class Counsel. The circumstances of the case required the litigation to be vigorously pursued if an excellent recovery through settlement was to be achieved. Class Counsel, in fact, did vigorously prosecute the case and obtained excellent results for the Class.
- H. The amount involved and the results obtained. There can be no doubt that at the outset, Plaintiffs' Counsel had no assurance of any recovery. Considering all involved, the amount and terms of the settlement reflect the quality of the result and the outstanding benefits provided by Class Counsel to the Class. The Court considers this settlement to be an excellent result for the Class.
- I. Experience, reputation and ability of counsel. Class Counsel's qualifications, skill, experience, ability and reputation are well known throughout the oil and gas and complex litigation legal communities. Class Counsel are exceptional litigators.
- J. The undesirability of the case. Compared to most civil litigation attracting counsel to represent plaintiffs, this litigation clearly fits the initially "undesirable" test. Few law firms would be willing, or able, to risk investing the time and expenses necessary to prosecute this litigation. The Defendants were well-financed, and well represented. Certainly, the possibility of a recovery was a risky matter.
- K. Nature and length of the professional relationship with the client. Class Counsel have established an excellent working relationship with each of the named Plaintiffs. There is always significant risk to a client who participates as a plaintiff in an oil and gas royalty owner class action, in

terms of the client's reputation, future business dealings, liability for costs, and other potentially adverse considerations.

- L. Awards in similar cases. The awards in similar cases were discussed in detail in Class Counsel's motion, exhibits and testimony. The Court incorporates said discussion herein by reference. The Court finds that a 40% fee is customary in these types of cases.

16. In 1980, the Oklahoma Supreme Court followed and modified *Burk, supra*, to further instruct District Courts that counsel fees cannot be fairly awarded on the basis of time alone, but other factors, particularly the litigation risk factor, must be considered. See *Oliver's Sportcenter, Inc. vs, National Standard Ins. Co.*, 1980 OK 190, 615 P.2d 291.

The case record indicated this was significant.

17. Based upon the Court's analysis of the *Burk* factors, the Court finds a reasonable fee in this case to be \$4,800,000.00, plus accrued interest thereon (which represents 40% of the Settlement Proceeds, and a lodestar multiplier on the base hourly fees of approximately 1.76, which is well within the range of reasonableness).⁴

IT IS THEREFORE ORDERED that Class Counsel be, and hereby are, awarded a fee of forty percent (40%) of the gross Settlement Proceeds, for an attorney fee in the amount of \$4,800,000.00, plus accrued interest thereon.

⁴ In appropriate cases where Class Counsel have created a large common fund, such as in the present case, multipliers of even 5 to 10 have been awarded. See, *Herbert Newberg*, *Newberg on Class Actions* (3rd), §14.03 (emphasis added):

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

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

Expert Witness Fees, Litigation Expenses and Class Representatives Fee:

18. The Court, having reviewed the accounting records which detail the expert witness fees and litigation expenses incurred in pursuit of class claims, having heard testimony regarding the necessity of such expenditures in preparation of the case, and having no objections filed as to these expenses, finds that reasonable expert witness fees and litigation expenses were incurred in the amount of \$730,726.19. However, as reflected in the Notice, Class Counsel has agreed to limit the recovery of litigation expenses from the Common Fund to \$600,000.00. The remaining \$130,726.19 of un-reimbursed litigation expenses will be absorbed by Class Counsel through their attorney's fee award.

19. The Court finds the Class Representatives have made substantial time and labor commitments to the Class, and have incurred serious legal and financial risks while pursuing this case on behalf of the Class, all of which resulted in obtaining an excellent benefit for the Class. The granting of a Class Representative Fee is based upon equitable considerations discussed above which relate to a party's efforts in the creation of a common fund for the mutual benefit of a class. Court awards to Class Representatives of 1% of the common fund are typical in these types of class actions with recoveries of this magnitude. In this action, Class Counsel has recommended and requested a Class Representatives' fee of \$120,000.00 (i.e., one percent (1%) of the Settlement Proceeds). The Court finds that compensation to the Class Representatives of \$120,000.00 (to be divided equally among the three Class Representatives) is fair and reasonable compensation for their services to the Class.

Administrative Expenses to be Paid by the Class:

20. The Settlement Agreement provides that “[t]he ordinary Administration Expenses for implementation of the proposed Plan of Notice and the Plan of Allocation and Distribution shall be borne by Chevron, **except that the Plaintiff Class shall be responsible for Allocation Expenses incurred for its own expert consultant(s).**”⁵ [Emphasis added.] Settlement Agreement, ¶4.7(c).

21. Class’ Expert Consultants have estimated that the Class’ Allocation Expenses will exceed 1% (\$120,000.00) of the Common Fund. However, subject to this Court’s approval, Class Counsel have entered into an agreement to retain the Consultants for a fixed fee of 1% of the Common Fund (\$120,000.00) to cover the Class’ portion of the necessary and ordinary Allocation Expenses contemplated by the terms of the Settlement Agreement.

22. The Court hereby approves the compensation arrangement with the Consultants to provide the Class’ portion of the necessary and ordinary Allocation Expenses contemplated by the terms of the Settlement Agreement (i.e., a fixed fee of \$120,000.00).

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that (1) Class Counsel are awarded an attorney fee of forty percent (40%) of the gross Settlement Proceeds in the amount of \$4,800,000.00, plus accrued and accruing interest thereon until paid; (2) Class Counsel are also awarded reimbursement of litigation expenses in the amount of \$600,000.00; (3) Class Representatives are awarded fees in the amount of \$120,000.00, to be divided equally among them; and (4) the Class Consultants retained by Class Counsel to provide the Class’ portion of the necessary and ordinary Allocation Expenses contemplated by the terms of the

⁵ “‘Allocation Expenses’ mean the reasonable expenses actually incurred to formulate and implement the procedures to allocate the Net Settlement Amount to the Class Wells and then to the individual Class Members pursuant to the Plan of Allocation and Distribution.” Settlement Agreement, ¶1.1.

Settlement Agreement are hereby awarded a fee in the amount of \$120,000.00.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon notification by Class Counsel that this Order has become Final and Unappealable (a date that shall not be any earlier than 30 days from the date of this Order), J.P. Morgan Chase Bank is authorized to accept instructions from Class Counsel to transfer the amounts awarded herein from the “Taylor v. Chevron Class Action Settlement Fund” to any account or accounts so designated by Class Counsel.

IT IS SO ORDERED this 22nd day of December, 2008.



The Honorable Gerald Riffe
Associate District Court