

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

DORSEY J. REIRDON,)	
)	
Plaintiff,)	
)	
v.)	Case No. 6:16-cv-113-KEW
)	
CIMAREX ENERGY CO.,)	
)	
Defendant.)	

**CLASS COUNSEL’S MEMORANDUM OF LAW IN SUPPORT OF
MOTION FOR APPROVAL OF REIMBURSEMENT OF LITIGATION EXPENSES**

I. SUMMARY OF ARGUMENT

In connection with approval of the Settlement¹ in the above-captioned Litigation, Class Counsel respectfully move the Court for reimbursement of expenses incurred in successfully prosecuting and resolving this Litigation not to exceed \$250,000, plus interest (the “Expense Request”)—the amount set forth in the Notice.² This request is fair and reasonable, and, therefore, Class Counsel respectfully request that it be approved.

Class Counsel has obtained an excellent recovery for the benefit of Class Members, which

¹ All capitalized terms not otherwise defined herein shall have the meanings given to them in the Stipulation and Agreement of Settlement dated September 5, 2018 (the “Settlement Agreement”), a copy of which was attached as Exhibit 1 to Plaintiff’s Memorandum of Law in Support of Plaintiff’s Motion to Certify the Settlement Class for Settlement Purposes, Preliminarily Approve Class Action Settlement, Approve Form and Manner of Notice and Set Date for Final Approval Hearing [Doc. No. 52-1].

² To date, Class Counsel has incurred out-of-pocket expenses of \$167,560.91. Class Counsel may incur additional expenses between now and the Final Approval Hearing. As such, at the Final Approval Hearing, Class Counsel may seek reimbursement for expenses incurred after the date of this filing, not to exceed \$250,000. Likewise, Class Counsel likely will incur future expenses after the Final Approval Hearing, and may seek reimbursement for such future expenses, up to a total of \$250,000. Class Counsel’s Expense Request does not include the Administration, Notice and Distribution Costs associated with effectuating the Settlement.

consists of: (1) a cash payment of \$9.5 million (the “Gross Settlement Fund”) to compensate the Settlement Class for past damages; and (2) Future Benefits to the Settlement Class consisting of binding changes to Defendant’s statutory interest payment practices and policies in Oklahoma. These Future Benefits are estimated to have a present value of at least \$11 million, bringing the total value of the Settlement to at least \$20.5 million.³ The \$9.5 million cash Gross Settlement Fund alone is an outstanding recovery for Class Members.⁴

In order to achieve this remarkable recovery for the Class, Class Counsel was required to expend a significant amount of out-of-pocket expenses that were necessary and reasonable for the prosecution of this action. Class Counsel now seeks reimbursement of those reasonable expenses, in an amount not to exceed \$250,000, plus interest—the amount set forth in the Notice.⁵ To date, Class Counsel have advanced \$167,560.91 in prosecuting and resolving this case. *See* Joint Class Counsel Decl. at ¶83. In addition to these expenses, Class Counsel may incur additional expenses between now and the Final Approval Hearing. *See id.* As such, at the hearing, Class Counsel may seek reimbursement for expenses incurred after the date of this filing, not to exceed \$250,000. *Id.* In addition, Class Counsel reserve their right to make additional expense requests following the Final Approval Hearing; however, in no event will Class Counsel’s cumulative expense requests exceed the \$250,000 stated in the Notice. Because the Expense Request is fair and reasonable,

³ *See* Affidavit of Barbara Ley at ¶3 (“Ley Aff.”), attached as Exhibit 3 to Plaintiff’s Final Approval Memorandum).

⁴ *See* Declaration of Bradley E. Beckworth and Patrick Ryan on Behalf of Class Counsel at ¶5 (“Joint Class Counsel Declaration”), attached as Exhibit 2 to Plaintiff’s Final Approval Memorandum; *see also* Ley Aff. at ¶3.

⁵ A copy of the Notice is attached as Exhibit A to the Declaration of Jennifer M. Keough on behalf of Settlement Administrator, JND Legal Administration LLC, Regarding Notice Mailing and Administration of Settlement (“JND Decl.”), which is attached as Exhibit 4 to Plaintiff’s Final Approval Memorandum.

and for the reasons set forth below, the Expense Request should be granted. *See* Declaration of Geoffrey Miller at ¶65 [Doc. No. 64].

II. FACTUAL AND PROCEDURAL SUMMARY

In the interest of brevity, Class Counsel will not recite the factual and procedural background of this Litigation again herein. Instead, Class Counsel respectfully refers the Court to the Final Approval Memorandum, the Joint Class Counsel Declaration, the pleadings on file, and any other matters of which the Court may take judicial notice, all of which are respectfully incorporated by reference as if set forth fully herein.

III. ARGUMENT

A. The Parties Have Agreed Federal Common Law Controls the Reasonableness of Any Requests for Expenses

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

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

Settlement Agreement at ¶11.8 (Doc. No. 52-1) (emphasis added).

The Parties' decision to contractually agree that federal common law controls the reasonableness of attorneys' expenses should be enforced. *See Reiridon v. XTO Energy Inc.*, Case No. 16-cv-87-KEW, United States District Court, Eastern District of Oklahoma, Docket No. 125 at 4-5; *see also* Miller Decl. at ¶32. This Court previously approved and held this exact contractual

language to be enforceable. *See Reirdon v. XTO Energy Inc.*, Docket No. 125 at 4-5. Moreover, the Tenth Circuit has recognized parties' freedom to contract regarding choice of law issues and also the fact that courts typically honor the parties' choice of law. Indeed, the Tenth Circuit has explained, "[a]bsent special circumstances, courts usually honor the parties' choice of law because two 'prime objectives' of contract law are 'to protect the justified expectations of the parties and to make it possible for them to foretell with accuracy what will be their rights and liabilities under the contract.'" *See Boyd Rosene & Assocs., Inc. v. Kansas Mun. Gas Agency*, 174 F.3d 1115, 1121 (10th Cir. 1999) (citing *Restatement 2d of Conflict of Laws* § 187, cmt. e (Am. Law Inst. 1988)); *Yavuz v. 61 MM, Ltd.*, 465 F.3d 418, 428 (10th Cir. 2006). Further expanding on this freedom to contract, the *Restatement* states:

These objectives may best be attained in multistate transactions by letting the parties choose the law to govern the validity of the contract and the rights created thereby. In this way, certainty and predictability of result are most likely to be secured. Giving parties this power of choice is also consistent with the fact that, in contrast to other areas of the law, persons are free within broad limits to determine the nature of their contractual obligations.

Restatement 2d of Conflict of Laws § 187, cmt. e (Am. Law Inst. 1988); *see also Williams v. Shearson Lehman Bros.*, 1995 OK CIV APP 154, ¶17, 917 P.2d 998, 1002 (concluding that parties' contractual choice of law should be given effect because it does not violate Oklahoma's constitution or public policy); *Barnes Group, Inc. v. C & C Prods., Inc.*, 716 F.2d 1023, 1029 n. 10 (4th Cir. 1983) ("Parties enjoy full autonomy to choose controlling law with regard to matters within their contractual capacity.").

B. The Request for Reimbursement of Expenses Is Reasonable Under Federal Common Law

Applying the Parties' chosen law—federal common law—Rule 23(h) allows courts to reimburse counsel for “non-taxable costs that are authorized by law or by the parties' agreement.”

See Fed. R. Civ. P. 23(h). “As with attorney fees, an attorney who creates or preserves a common fund for the benefit of a class is entitled to receive reimbursement of all reasonable costs incurred...in addition to the attorney fee percentage.” *Vaszlavik v. Storage Tech. Corp.*, No. 95-B-2525, 2000 U.S. Dist. LEXIS 21140, at *11 (D. Colo. Mar. 9, 2000) (citations omitted). Similarly, should the Court choose to disregard the Parties’ choice of law and instead apply Oklahoma state law, the Oklahoma class action statute provides “the court may award...nontaxable costs that are authorized by law or by the parties’ agreement.” Okla. Stat. tit. 12, § 2023(G)(1).

Class Counsel respectfully request reimbursement of Litigation Expenses that have been and may be advanced or incurred by Class Counsel in prosecuting and resolving this Litigation. See Joint Class Counsel Decl. at ¶¶81-83.⁶ Class Counsel set forth in the Notice that they would seek up to \$250,000 in reimbursement of expenses. See JND Decl. To date, Class Counsel’s out-of-pocket expenses are \$167,560.91.⁷ All of these expenses were reasonably and necessarily incurred by Class Counsel and are directly related to their prosecution and resolution of this Litigation. See Joint Class Counsel Decl. at ¶82. The costs include routine expenses related to copying, court fees, postage and shipping, phone charges, legal research, and travel and

⁶ In a similar action, this Court awarded Class Counsel \$223,056.78 in past expenses and additional expenses up to \$300,000. See Order Awarding Reimbursement of Litigation Expenses [Doc. No. 125] in *Reirdon v. XTO Energy Inc.*, No. 6:16-00087-KEW (E.D. Okla. Jan. 29, 2018). In another action, this Court awarded Class counsel litigation expenses in an amount not to exceed \$3,250,000. See Order Awarding Reimbursement of Litigation Expenses [Doc. No. 232] in *Chieftain Royalty Co. v. XTO Energy Inc.*, No. CIV-11-29-KEW (E.D. Okla. Mar. 27, 2018).

⁷ Because additional expenses will continue to be incurred through and after the Final Approval Hearing, Class Counsel specifically request reimbursement of \$167,560.91 *plus* the ability to recover additional expenses up to \$250,000—the noticed amount—to the extent such expenses are actually incurred. At the Final Approval Hearing, Class Counsel will provide the Court with updated charts of Class Counsel’s actual expenses incurred.

transportation, as well as expenses for experts, document production and review, and mediation, which are typical of large, complex class actions such as this.⁸ *Id.* As such, the Expense Request is fair, reasonable and should be granted. *See* Miller Decl. at ¶65.

In addition, several absent Class Members executed affidavits in support of Class Counsel's Expense Request. *See* Affidavits of Legacy Royalty, LLC, Michael Starceвич, Clear Energy, Ltd., Chieftain Royalty Co., Omega Royalty Co., Dwayne Sager, Sagacity, Inc., and G.O. Farms, LLC, attached as Exhibits 6-13 to Plaintiff's Final Approval Memorandum.

Therefore, Class Counsel respectfully request the Court award the Expense Request in full and award any additional amount Class Counsel may incur after the filing of this Memorandum not to exceed \$250,000, upon fourteen (14) days written notice to the Court.

IV. CONCLUSION

For the foregoing reasons, Class Counsel respectfully requests the Court enter an order granting approval of the Expense Request of \$167,560.91, *plus* the ability to recover additional expenses up to \$250,000—the noticed amount—to the extent such expenses are actually incurred.

⁸ As stated *supra*, Class Counsel's Expense Request does not include the Administration, Notice and Distribution Costs associated with effectuating the Settlement.

DATED: November 20, 2018

Respectfully submitted,

s/Patrick M. Ryan

Patrick M. Ryan, OBA No. 7864
Phillip G. Whaley, OBA No. 13371
Jason A. Ryan, OBA No. 18824
Paula M. Jantzen, OBA No. 20464
RYAN WHALEY COLDIRON
JANTZEN PETERS & WEBBER PLLC
900 Robinson Renaissance
119 North Robinson
Oklahoma City, OK 73102
(405) 239-6040 Telephone
(405) 239-6766 Facsimile
pryan@ryanwhaley.com
pwhaley@ryanwhaley.com
jryan@ryanwhaley.com
pjantzen@ryanwhaley.com

Bradley E. Beckworth, OBA No. 19982
bbeckworth@nixlaw.com
Jeffrey Angelovich, OBA No. 19981
jangelovich@nixlaw.com
Andrew G. Pate, TX Bar No. 24079111
dpate@nixlaw.com
Trey Duck, OBA No. 33347
tduck@nixlaw.com
NIX PATTERSON LLP
3600 North Capital of Texas Highway
Suite 350, Building B
Austin, TX 78746
(512) 328-5333 Telephone
(512) 328-5335 Facsimile

Susan Whatley, OBA No. 30960
swhatley@nixlaw.com
NIX PATTERSON LLP
205 Linda Drive
Daingerfield, TX 75638
(903) 645-7333 Telephone
(903) 645-4415 Facsimile

Michael Burrage, OBA No. 1350
mburrage@whittenburrage.com
WHITTEN BURRAGE
512 N. Broadway Ave., Suite 300
Oklahoma City, OK 73102
(405) 516-7800 Telephone
(405) 516-7859 Facsimile

Robert Barnes, OBA No. 537
rbarnes@barneslewis.com
Patranell Lewis, OBA No. 12279
plewis@barneslewis.com
BARNES & LEWIS, LLP
208 N.W. 60th Street
Oklahoma City, OK 73118
(405) 843-0363 Telephone
(405) 843-0790 Facsimile

Lawrence A. Murphy, OBA No. 17681
larrymurphy999@gmail.com
LAWRENCE R. MURPHY, JR., P.C.
624 S. Boston, Floor 8
Tulsa, OK 74119
(918) 585-2394 Telephone
(918) 585-1449 Facsimile

COUNSEL FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that on November 20, 2018, a true and correct copy of the above and foregoing document was served in accordance with the Local Rules on all counsel of record through the Court's CM/ECF filing system.

s/Patrick M. Ryan

Patrick M. Ryan

Subject: Activity in Case 6:16-cv-00113-KEW Reirdon v. Cimarex Energy Co. Brief in Support of Motion
Date: Tuesday, November 20, 2018 at 6:53:03 PM Central Standard Time
From: CM-ECFRetMail_OKED@oked.uscourts.gov
To: CM-ECFLive_OKED@oked.uscourts.gov

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.

*****NOTE TO PUBLIC ACCESS USERS***** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.

U.S. District Court

Eastern District of Oklahoma

Notice of Electronic Filing

The following transaction was entered by Ryan, Patrick on 11/20/2018 at 6:53 PM CST and filed on 11/20/2018

Case Name: Reirdon v. Cimarex Energy Co.
Case Number: [6:16-cv-00113-KEW](#)
Filer: Dorsey J. Reirdon
Document Number: [68](#)

Docket Text:

[BRIEF in Support of Motion \(Re: \[67\] MOTION for Approval of Reimbursement of Litigation Expenses \) by Dorsey J. Reirdon ;\(Ryan, Patrick\)](#)

6:16-cv-00113-KEW Notice has been electronically mailed to:

Andrew G. Pate dpate@nixlaw.com, ncameron@nixlaw.com

Bradley E. Beckworth bbeckworth@nixlaw.com, codyhill@nixlaw.com, sprince@nixlaw.com, swhatley@nixlaw.com

Bradley W. Welsh bwelsh@gablelaw.com, kspeed@gablelaw.com

Emily Nash Kitch ekitch@barneslewis.com, aoldenburg@barneslewis.com, lbeebe@barneslewis.com

Jason A. Ryan jryan@ryanwhaley.com, jmickle@ryanwhaley.com

Jeffrey J. Angelovich jangelovich@nixlaw.com, ncameron@nixlaw.com, sprince@nixlaw.com

Lawrence R. Murphy, Jr larrymurphypc@icloud.com

Michael Burrage mburrage@whittenburrage.com, cnorman@whittenburrage.com, docketing@whittenburrage.com

Nathan K. Davis ndavis@swlaw.com, docket_den@swlaw.com, hnilson@swlaw.com

Patranell Lewis plewis@barneslewis.com, abarnes@barneslewis.com, lbeebe@barneslewis.com, lrosales@barneslewis.com

Patrick M. Ryan pryan@ryanwhaley.com, dmaple@ryanwhaley.com, jmickle@ryanwhaley.com

Paula M. Jantzen pjantzen@ryanwhaley.com, jmickle@ryanwhaley.com, mkeplinger@ryanwhaley.com

Phillip G. Whaley pwhaley@ryanwhaley.com, dmaple@ryanwhaley.com, jmickle@ryanwhaley.com

Robert N. Barnes rbarnes@barneslewis.com, aoldenburg@barneslewis.com, ekitch@barneslewis.com, lbeebe@barneslewis.com

Susan R. Whatley swhatley@nixlaw.com

Trey Duck tduck@nixlaw.com, sprince@nixlaw.com

6:16-cv-00113-KEW Notice has been delivered by other means to:

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1108664770 [Date=11/20/2018] [FileNumber=1005837-0] [7ad002d2c08a6511bd3d2772a67d93aa8f0e495ce1f7b1a2d8160177fb280d15388e5997661426df38885bf8264d58c00c7bd8476f3f4aac809f42d0e7068eea]]