

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA**

CHIEFTAIN ROYALTY COMPANY,)	
)	
Plaintiff,)	
)	
v.)	Case No. CIV-18-1225-J
)	
SM ENERGY COMPANY (including)	
Predecessors, successors and affiliates),)	
)	
Defendant.)	

**ORDER AWARDING REIMBURSEMENT
OF LITIGATION EXPENSES**

Before the Court is Class Counsel’s Motion for Approval of Reimbursement of Litigation Expenses [Doc. No. 108] (the Motion) and Memorandum of Law in Support Thereof [Doc. No. 109] (the Memorandum), wherein Class Counsel seeks entry of an Order approving Class Counsel’s request for Reimbursement of Litigation Expenses, which were incurred in successfully prosecuting and resolving this Litigation, in an amount not to exceed \$800,000.00 — the amount set forth in the Notice. The Court has considered the Motion and Memorandum, all matters submitted in connection therewith and the proceedings on the Final Fairness Hearing. Upon review, the Court finds the Motion is GRANTED.

IT IS THEREFORE ORDERED as follows:

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

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

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

4. The Notice stated that Class Counsel would seek Reimbursement of Litigation Expenses, which were incurred in successfully prosecuting and resolving this Litigation, in an amount not to exceed \$800,000.00. The Notice also stated Class Counsel would request approval of Administration, Notice and Distribution Costs associated with effectuating the Settlement in an amount not to exceed \$225,000.00 to be paid from the Gross Settlement Fund. Notice of Class Counsel's request for Reimbursement of Litigation Expenses and approval of Administration, Notice and Distribution Costs was given to all Settlement Class Members who could be identified with reasonable effort. The form and method of notifying the Settlement Class of the request for Reimbursement of Litigation Expenses and approval of Administration, Notice and Distribution Costs is hereby determined to have been the best notice practicable under the circumstances, constitutes due and sufficient notice to all persons and entities entitled to receive such notice, and fully satisfies the requirements of Rule 23, Federal Rules of Civil Procedure, and due process.

5. Class Counsel provided the Court with abundant evidence in support of their request for Reimbursement of Litigation Expenses, including but not limited to: (1) the Motion and Memorandum; (2) the Declaration of Bradley E. Beckworth and Robert N. Barnes on Behalf of Class Counsel (Joint Class Counsel Decl.); (3) the Declaration of Bradley E. Beckworth on Behalf of Nix Patterson, LLP (NP Decl.); (4) the Declaration of Robert N. Barnes, Patranell Britten Lewis, and Emily Nash Kitch on behalf of Barnes & Lewis LLP; (5) the Declaration of Robert

Abernathy, President of Chieftain Royalty Company; (6) the Declaration of Jennifer M. Keough on Behalf of Settlement Administrator, JND Legal Administration LLC, Regarding Notice, Mailing and Administration of Settlement (JND Decl.); and (7) the Affidavits of Absent Class Members: Dan Little on behalf of Sagacity, Inc.; Mike J. Weeks on behalf of Pagosa Resources, LLC; Ben Barresi on behalf of Cosmo Energy, LLC; and Robert E. Gonce, Jr. on behalf of Castlerock Resources, Inc. This evidence was submitted to the Court well before the objection and opt-out deadline, and none of the evidence was objected to or otherwise refuted by any Settlement Class Member.

6. Class Counsel is hereby awarded Reimbursement of Litigation Expenses in an amount not to exceed \$800,000.00, to be paid from the Gross Settlement Fund. In making this award, the Court makes the following findings of fact and conclusions of law:

(a) The Settlement has created a Gross Settlement Fund of \$10,000,000.00 in cash. Class Members will benefit from the Settlement that occurred because of the substantial efforts of Class Representative and Class Counsel;

(b) On February 23, 2021, JND caused the Short Form Notice of Settlement to be mailed to 4,638 unique mailing records identified in the mailing data. *See* JND Decl. at ¶6. The Short Form Notice expressly stated that Class Counsel would seek Reimbursement of Litigation Expenses in an amount not to exceed \$800,000.00. The Short Form Notice also directed class members to a website for further information, including the Long Form Notice, and also provided the option of requesting a Long Form Notice be sent via U.S. Mail. There were no objections to the requested reimbursement of expenses;

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

(d) The Parties here contractually agreed that the Settlement Agreement shall be governed solely by federal common law with respect to certain issues, including the reasonableness of 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 Plaintiff's Attorneys' Fees and *Litigation 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 (emphasis added) [Doc. No. 96-1];

(e) This choice of law provision should be and is hereby enforced. *See Boyd Rosene & Assocs., Inc. v. Kansas Mun. Gas Agency*, 174 F.3d 1115, 1121 (10th Cir. 1999) (citing *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); *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."). Oklahoma federal courts routinely enforce similar language in settlement agreements. *See, e.g., McClintock v. Enterprise Crude Oil LLC*, No. 6:16-cv-136-KEW (E.D. Okla. Mar. 26, 2021) (Dkt. No. 122);

Chieftain Royalty Co. v. Newfield Exploration Mid-Continent Inc., No. 17-cv-336-KEW (E.D. Okla. Mar. 3, 2020) (Dkt. No. 70); *Chieftain Royalty Co. v. Marathon Oil Co.*, No. 17-cv-334-SPS (E.D. Okla. Mar. 8, 2019) (Dkt. No. 119); *Chieftain Royalty Co. v. XTO Energy, Inc.*, No. 11-cv-29-KEW (E.D. Okla. Mar. 27, 2018) (Dkt. No. 230); *Reirdon v. Cimarex Energy Co.*, No. 16-cv-113-KEW (E.D. Okla. Dec. 18, 2018) (Dkt. No. 103); *Reirdon v. XTO Energy, Inc.*, No. 16-cv-87-KEW (E.D. Okla. Jan. 29, 2018) (Dkt. No. 126); *Reirdon v. Cimarex Energy Co.*, No. 16-cv-445-SPS (E.D. Okla. Jan. 29, 2020) (Dkt. No. 134 at ¶¶6(d)-(e)); *Cecil v. BP America Production Co.*, No. 16-cv-410-KEW (E.D. Okla. Nov. 19, 2018) (Dkt. No. 260);

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

(g) Class Counsel set forth in the Notice that they would seek up to \$800,000.00 in reimbursement of expenses. *See* JND Decl. at Exs. A, C. To date, Class Counsel’s out-of-pocket expenses are \$731,591.57. *See* Joint Class Counsel Decl. at ¶92; NP Decl. at ¶35; BL Decl. ¶18. The Court finds that all of these expenses were reasonably and necessarily incurred by Class Counsel and are directly related to their prosecution and resolution of

this Litigation. Moreover, the Court finds that these expenses are fair and reasonable under Oklahoma state law for the same reasons they are fair and reasonable under federal common law and supported by the same evidence of reasonableness. The costs include routine expenses related to copying, court fees, postage and shipping, phone charges, legal research, and travel and transportation, as well as expenses for experts, and document production and review, which are typical of large, complex class actions such as this. *See* NP Decl. at ¶35. As such, the Expense Request is fair, reasonable and is hereby granted;

(h) Therefore, Class Counsel is awarded \$731,591.57 in past expenses and may request any additional amount Class Counsel may incur after the entry of this Order not to exceed a total award of \$800,000.00, upon fourteen (14) days' written notice to the Court.

7. Class Counsel's request for approval of Administration, Notice and Distribution Costs associated with effectuating the Settlement in an amount not to exceed \$225,000.00 to be paid from the Gross Settlement Fund is also approved.

8. Any appeal or any challenge affecting this Order Awarding Reimbursement of Litigation Expenses shall in no way disturb or affect the finality of the Order and Judgment Granting Final Approval of Class Action Settlement, the Settlement Agreement or the Settlement contained therein.

9. Exclusive jurisdiction is hereby retained over the parties and the Settlement Class Members for all matters relating to this Litigation, including the administration, interpretation, effectuation or enforcement of the Settlement Agreement and this Order.

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

IT IS SO ORDERED this 27th day of April, 2021.



BERNARD M. JONES
UNITED STATES DISTRICT JUDGE

Subject: Activity in Case 5:18-cv-01225-J Chieftain Royalty Company v. SM Energy Company Order on Motion for Order

Date: Tuesday, April 27, 2021 at 12:22:57 PM Central Daylight Time

From: okwd_ecf_notice@okwd.uscourts.gov

To: okwdecf@okwd.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

Western District of Oklahoma[LIVE]

Notice of Electronic Filing

The following transaction was entered on 4/27/2021 at 12:22 PM CDT and filed on 4/27/2021

Case Name: Chieftain Royalty Company v. SM Energy Company

Case Number: [5:18-cv-01225-J](#)

Filer:

WARNING: CASE CLOSED on 04/27/2021

Document Number: [116](#)

Docket Text:

ORDER ~ Awarding Reimbursement of Litigation Expenses. The Court has considered the Motion and Memorandum, all matters submitted in connection therewith and the proceedings on the Final Fairness Hearing. Upon review, the Court finds the Motion is GRANTED. Signed by Honorable Bernard M. Jones on 4/27/2021. (dwl)

5:18-cv-01225-J Notice has been electronically mailed to:

Robert N Barnes rbarnes@barneslewis.com, abarnes@barneslewis.com, lbeebe@barneslewis.com

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

J Kevin Hayes khayes@hallestill.com, ghambrick@hallestill.com, lwest@hallestill.com

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

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

Pamela S Anderson panderson@hallestill.com, ghambrick@hallestill.com, lwest@hallestill.com

Emily N Kitch ekitch@barneslewis.com

Lisa P Baldwin lbaldwin@nixlaw.com, ncameron@nixlaw.com, sprince@nixlaw.com

Susan R Whatley swhatley@nixlaw.com, sprince@nixlaw.com

David N Smith dneilsmith@mac.com, tracyrector.nixlaw@me.com

Michael B Angelovich, Sr mangelovich@nixlaw.com, tdean@nixlaw.com

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

Nathan B Hall nathan@nixlaw.com, nhall@nixlaw.com

5:18-cv-01225-J 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=1041971380 [Date=4/27/2021] [FileNumber=4495074-0
] [67f04db38587d58966285a36ca1e09c636c5d38b0fcaeb7198820ed78da1f55674e
bde03cc1729265b129c5614835bf5e46e56ca4bf77c777e176bffd6d68a4]]