

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

Wake Energy, LLC, on behalf of itself and  
all others similarly situated,

Plaintiff,

v.

BCE-MACH LLC, *et al.*,

Defendants.

Frederick M. Scott III, Trustee of the Scott  
Family Trust and Wake Energy, LLC, on  
behalf of themselves and all of others  
similarly situated,

Plaintiff,

v.

BCE-MACH LLC, *et al.*,

Defendants.

Case No. CIV-22-794-HE  
*(Consolidated Case)*

Case No. CIV-23-0264-HE

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**ORDER AWARDING ATTORNEYS' FEES**

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The Class Representatives and Class Counsel have moved for approval of an award of attorneys' fees to Class Counsel in the amount of \$1,680,000, approval of litigation expenses in the amount of \$76,939.13, administration and distribution costs in the amount of \$250,000, and approval of a case contribution award in the amount of \$84,000 for the services of the Class Representatives. They also seek approval of a reserve of \$30,000 to cover potential administrative and other costs incurred after filing of the motion and before final administration of the settlement.

The attorneys' fees sought are consistent with the provisions of the Settlement Agreement and of the notices sent to class members. The notices also advised that the other relief sought (litigation and administrative costs, case contributions awards, etc.) would be pursued at the appropriate time. No objection to the fee and other requests was submitted either before or since the final fairness hearing.

With respect to the attorneys' fees, the court has an obligation to assure that the fees requested are fair and reasonable even in the absence of objection. *See* Comment to Fed. R. Civ. P. 23(h) (2003 amendments). Here, there is a sufficient basis for an award of attorneys' fees based on the agreement of the parties, which provides that the federal common law shall govern any request for fees or reimbursement of expenses. Federal law generally allows a court to determine fees based on either the "percentage of the fund" method or the lodestar method. *See generally, Brown v. Phillips Petroleum Co.*, 838 F.2d 451, 453-54 (10th Cir. 1988). In cases like this one, where a common fund is recovered on behalf of the class, the percentage of the fund method is preferred. Whether the particular percentage and the resulting fee is reasonable is evaluated by, among other things, considering the factors set out in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974). Those are: (1) the time and labor required, (2) the novelty and difficulty of the questions involved, (3) the skill required to perform the services properly, (4) the preclusion of other employment by the attorneys, (5) the customary fee, (6) whether the fee is fixed or contingent, (7) any applicable time limitations, (8) the amount in controversy and the results obtained, (9) the experience, reputation and abilities of the attorneys, (10) the undesirability of the case, (11) the nature of the professional relationship with the client,

and (12) awards in similar cases. *Id.* at 717-719. Not all of the factors apply in every case, and some of those which do apply may deserve more weight than others.

Here, the court concludes the requested fee, though probably at the top of the range of permissible fees, is reasonable. The fee arrangement with counsel was a contingent fee arrangement, which means counsel had some risk of no recovery depending on the outcome of the proceedings. The particular contingent amount (up to 40%) was disclosed to class members up front, and no objections were lodged. The results obtained were good, tested against the amounts plaintiffs indicate they would have sought had the case gone to trial.<sup>1</sup> So far as is indicated by the various submissions, Class Counsel ably discharged their duties.

The time and labor involved, as indicated by counsel's post-hearing submissions, were just under 1000 hours of attorney time. While that much attorney time (as opposed to that of others involved in the calculation of underpaid or unpaid amounts) seems very substantial given the nature of the issues involved,<sup>2</sup> there were, as movant notes, two lawsuits involved which were ultimately consolidated into this case and multiple companies and records systems which had to be considered. In any event, the indications of attorney time and regular rates charged and the cross-check that they offer as to the

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<sup>1</sup> *The court views the "results obtained" as the \$4,200,000 cash settlement received and is unpersuaded that the "future benefits" referred to in the motion are a meaningful factor for present purposes.*

<sup>2</sup> *See Donald D. Miller Rev. Family Trust v. DCP Operating Co. LP*, 2021 WL 6072824 (E.D. Okla. 2021) where, in a similar statutory interest case, the undersigned judge approved a fee representing a cross-check "multiple" (i.e. the ratio of a lodestar-type fee to the percentage fee sought) of over three. Here, the multiple is somewhat less than three.

reasonableness of a requested contingent fee, suggest that the requested 40% fee is not unreasonable in the particular circumstances of this case.<sup>3</sup>

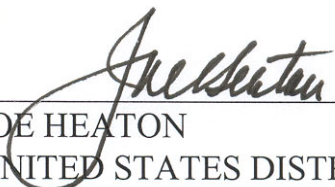
As it did in Miller Operating, the court declines to conclude that a 40% fee should be viewed as “standard” in cases of this sort, but nonetheless concludes that the 40% sought here is otherwise reasonable.

The court similarly concludes that the litigation expenses for which reimbursement is sought, the case contribution award, and the cost reserve are reasonable in the particular circumstances of this case.

Accordingly, the Motion [Doc. #65] is **GRANTED**. Attorneys’ fees of \$1,680,000, a Case Contribution Award of \$84,000, litigation expenses incurred in the amount of \$76,939.13, administration, notice, and distribution costs incurred of up to \$250,000, and a reserve of up to \$30,000 for future litigation and administrative expenses are **APPROVED** and shall be deducted from the Gross Settlement Fund before distribution checks are mailed to class members.

**IT IS SO ORDERED.**

Dated this 11th day of December, 2024.

  
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JOE HEATON  
UNITED STATES DISTRICT JUDGE

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<sup>3</sup> Counsel’s declaration states that Class Counsel regularly charge \$600 per hour for their services. The court assumes, for the purposes of this truncated cross-check, that those rates are in the ballpark.