

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

| | | |
|--|---|-----------------------|
| CHRISTOPHER SNIDER, on behalf of the |) | |
| Seventy Seven Energy Inc. Retirement & |) | |
| Savings Plan and a class of similarly |) | |
| situated participants of the Plan, |) | |
| |) | |
| Plaintiff, |) | Case No. CIV-20-977-D |
| |) | |
| v. |) | |
| |) | |
| ADMINISTRATIVE COMMITTEE, |) | |
| SEVENTY SEVEN ENERGY INC. |) | |
| RETIREMENT & SAVINGS PLAN; et al. |) | |
| |) | |
| Defendants. |) | |

**PLAINTIFF'S UNOPPOSED MOTION FOR ATTORNEYS' FEES, COSTS AND
SERVICE AWARDS AND INCORPORATED MEMORANDUM OF LAW**

TABLE OF CONTENTS

I. INTRODUCTION 1

II. BACKGROUND 2

 A. Plaintiff and His Counsel Vigorously Litigated On Behalf Of The Class 2

 B. Plaintiff and His Counsel Negotiated an Outstanding Settlement. 4

 C. The Court Granted Preliminary Approval of the Proposed Settlement..... 5

 D. The Parties Satisfied the Notice Requirements 5

III. ARGUMENT 6

 A. Legal Standard For Attorneys’ Fees Awards..... 6

 B. The Fee Request is Reasonable Under the Percentage Approach..... 8

 1. The Requested Fee Amount is Consistent with Fees Approved by
 Courts in this Jurisdiction and Elsewhere in Common Fund Cases. . 8

 2. Application of the Applicable *Johnson* Factors Confirms the
 Requested Fee is Reasonable. 10

 a. Litigation of the Claims Required Substantial Time
 and Labor..... 11

 b. The Case Presented Novel and Difficult Issues..... 12

 c. Obtaining a Successful Outcome Required Skilled and
 Experienced Class Counsel. 14

 d. Class Counsel Was Precluded from Taking on Other Work as
 a Result of this Litigation and the Time Limitations it
 Imposed..... 15

 e. The Fee is Consistent with the Customary Fee for Similar
 Work; and is Entirely Contingent..... 16

 f. The Results Obtained by Plaintiff and Class Counsel are
 Exemplary. 16

| | | |
|-----|--|----|
| g. | The Experience, Reputation and Ability of the Attorneys.... | 18 |
| h. | The Undesirability of the Case. | 18 |
| i. | Awards in Similar Cases..... | 19 |
| C. | The Fee Is Reasonable Under A Lodestar Crosscheck..... | 20 |
| D. | Class Counsel’s Request to be Reimbursed \$106,855.66 in Expenses Advanced to the Class is Reasonable and Appropriate. | 23 |
| E. | A Case Contribution Award of \$20,000 is Appropriate..... | 24 |
| IV. | CONCLUSION | 25 |

TABLE OF AUTHORITIES

| Cases | Page(s) |
|---|----------------|
| <i>Amara v. Cigna Corp.</i> , 534 F. Supp. 2d 288 (D. Conn. 2008)..... | 12 |
| <i>In re Anadarko Basin Oil & Gas Lease Antitrust Litig.</i> , No. 16-209, 2019 WL 1867446 (W.D. Okla. Apr. 25, 2019)..... | 8, 24 |
| <i>Anderson v. Merit Energy Co.</i> , No. 07-916, 2009 WL 3378526 (D. Colo. Oct. 20, 2009)..... | 8 |
| <i>Aragon v. Clear Water Prod. LLC</i> , No. 15-2821, 2018 WL 6620724 (D. Colo. Dec. 18, 2018) | <i>passim</i> |
| <i>Bear Ranch, L.L.C. v. Heartbrand Beef, Inc.</i> , 885 F.3d 794 (5th Cir. 2018) | 11 |
| <i>Bekker v. Neuberger Berman Group 401(k) Plan Investment Comm.</i> , 504 F.Supp.3d 265 (S.D.N.Y. Dec. 1, 2020) | 12, 14, 25 |
| <i>Bilewicz v. FMR Co.</i> , No. 13-10636, 2014 WL 8332137 (D. Mass. Oct. 16, 2014) | 9 |
| <i>Boeing Co. v. Van Gemert</i> , 444 U.S. 472 (1980)..... | 6 |
| <i>Boxell v. Plan for Group Ins. of Verizon Commun., Inc.</i> , No. 1:13-89, 2015 WL 4464147 (N.D. Ind. July 21, 2015) | 21 |
| <i>Braver v. Northstar Alarm Servs., LLC</i> , No. 17-0383-F, 2020 WL 6468227 (W.D. Okla. Nov. 3, 2020) | 6, 24 |
| <i>Brown v. Phillips Petroleum Co.</i> , 838 F.2d 451 (10th Cir. 1988) | 6, 8, 10, 11 |
| <i>Casey v. Reliance Trust Co.</i> , 18-424 (E.D. Tex.) | 20 |
| <i>Casey v. Reliance Trust Co.</i> , No. 18-424, D.I. 176 | 9, 24 |
| <i>Cates v. Trustees of Columbia Univ.</i> , No. 16-6524, 2021 WL 4847890 (S.D.N.Y. Oct. 18, 2021)..... | <i>passim</i> |

Chieftain Royalty Co. v. Enervest Energy Institutional Fund XIII-A, L.P.,
888 F.3d 455 (10th Cir. 2017) 23

Chieftain Royalty Co. v. XTO Energy Inc.,
No. 11-29-KEW, 2018 WL 2296588 (E.D. Okla. Mar. 27, 2018) 15, 16, 19, 22

Choate v. Wilmington Trust, N.A.,
17-250 (D. Del.) 20, 24

*Cimarron Pipeline Construction, Inc. v. National Council on
Compensation*,
Case Nos. 89-822-T, 89-1186-T, 1993 WL 355466 (W.D. Okla. June 8,
1993) 8

CompSource Oklahoma v. BNY Mellon, N.A.,
No. 08-469-KEW, 2012 WL 6864701 (E.D. Okla. Oct. 25, 2012) 20

Cook v. Rockwell Int'l Corp.,
No. 90181, 2017 WL 5076498 22

Cunningham v. Wawa, Inc.,
2021 WL 1626482 (E.D. Pa. Apr. 21, 2021) 21

Fankhouser v. XTO Energy, Inc.,
No. 07-798-L, 2012 WL 4867715 (W.D. Okla. Oct. 12, 2012) 23

Figas v. Wells Fargo,
No. 08–4546 (D. Minn.) 17

Frommert v. Conkright,
No. 00-6311, 2016 WL 7186489 (W.D.N.Y. Dec. 12, 2016) 21

High St. Rehab., LLC v. Am. Specialty Health Inc.,
No. 12-7243, 2019 WL 4140784 (E.D. Pa. Aug. 29, 2019) 10

Hill v. Hill Bros. Constr. Co., Inc.,
No. 3:14-213, 2018 WL 280537 (N.D. Miss. Jan. 3, 2018) 13

Hitch Enterprises, Inc. v. Cimarex Energy Co.,
No. 11-13-W, 2013 WL 12090055 (W.D. Okla. July 2, 2013) 6, 7

Johnson v. Georgia Highway Exp., Inc., 488 F.2d at 717–19 8

*In Re: Heartland Payment Systems, Inc. Customer Data Security Breach
Litigation*,
851 F. Supp. 2d at 1087 21

Kelly v. Johns Hopkins Univ.,
 No. 16-2835, 2020 WL 434473 (D. Md. Jan. 28, 2020).....*passim*

Krueger v. Ameriprise Fin., Inc.,
 No. 11-2781, 2015 WL 4246879 (D. Minn. July 13, 2015) 10

In re Marsh ERISA Litig.,
 265 F.R.D. 128 (S.D.N.Y. 2010) 9

McBean v. City of New York,
 233 F.R.D. 377 (S.D.N.Y. 2006) 25

McClintock v. Enter. Crude Oil LLC,
 No. 16-136-KEW, 2021 WL 6133884 (E.D. Okla. Mar. 26, 2021) 11

Mills v. Elec. Auto-Lite Co.,
 396 U.S. 375 (1970)..... 6

Mishkin v. Zynex, Inc.,
 No. 09-780, 2012 WL 4069295 (D. Colo. Sep. 14, 2012)..... 22

Myers v. The 401(K) Fiduciary Committee For Seventy Seven Energy, Inc.
A/K/A The Administrative Committee,
 Case No. 17-200-D 3

Northumberland Cnty. Ret. Sys. v. GMX Res. Inc.,
 No. 11-520-D, 2014 WL 12014020 (W.D. Okla. July 31, 2014)..... 19

Pledger v. Reliance Trust Co.,
 No. 15-4444, 2021 WL 2253497 (N.D. Ga. Mar. 8, 2021) 9

Prince v. Eaton Vance Corp.,
 No. 18–12098, Dkt. 57 (D. Mass Sept. 24, 2019)..... 17

Richards-Donald v. Teachers Insurance & Annuity Ass’n of Amer.,
 No. 15–8040 (S.D.N.Y.) 17

Rothe v. Battelle Mem’l Inst.,
 No. 1:18-3179, 2021 WL 2588873 (D. Colo. June 24, 2021) 7, 9

In re Schering-Plough Corp. Enhance ERISA Litig.,
 No. 08-1432, 2012 WL 1964451 (D.N.J. May 31, 2012)..... 10

Schweitzer v. Inv. Comm. Of Phillips 66 Savings Plan,
 960 F.3d 190 (5th Cir. 2020) 18

Silverman v. Motorola Solutions, Inc.,
739 F.3d 956 (7th Cir. 2013) 19

Sims v. BB&T Corp.,
No. 1:15-732 & 1:15-841, 2019 WL 1993519 (M.D.N.C. May 6, 2019) 9, 17

Smith v. Krispy Kreme Doughnut Corp.,
No. 05-187, 2007 WL 119157 (M.D.N.C. Jan. 10, 2007) 12

Spano v. Boeing Co.,
No. 06-743, 2016 WL 3791123 (S.D. Ill. Mar. 31, 2016) 10, 21

Stevens v. SEI Investments Co.,
No. 18-4205, 2020 WL 996418 (E.D. Pa. Feb. 28, 2020) (awarding one
third of settlement fund and citing *In re Merck & Co., Inc. Vytorin*
ERISA Litig., 2010 WL 547613, at *9 (D.N.J. Feb. 9, 2010) 10

Swain v. Wilmington Trust N.A.,
No. 17-71, D.I. 123 (D. Del.) 9

Tussey v. ABB, Inc.,
850 F.3d 951 (8th Cir. 2017) 18

Tussey v. ABB, Inc.,
No. 06-4305, Dkt. 869 (W.D. Mo. Aug. 16, 2019) 18

Tuten v. United Airlines, Inc.,
41 F. Supp. 3d 1003 (D. Colo. 2014) 22

UFCW Loc. 880-Retail Food Emps. Joint Pension Fund v. Newmont Min.
Corp.,
352 F. App'x 232 (10th Cir. 2009) 24

In re United Telecommunications, Inc. Sec. Litig.,
No. 90-2251, 1994 WL 326007 (D. Kan. 1994) 9

Urakhchin v. Allianz Asset Mgmt. of Amer., L.P.,
No. 15-1614, 2018 WL 8334858 (C.D. Cal. July 30, 2018) 17

Uselton v. Commercial Lovelace Motor Freight, Inc.,
9 F.3d 849 (10th Cir. 1993) 7

White Fam. Mins., LLC v. EOG Res., Inc.,
No. 19-409-KEW, 2021 WL 6138867 (E.D. Okla. Nov. 12, 2021) 19

Will v. Gen. Dynamics Corp.,
No. 06-698, 2010 WL 4818174 (S.D. Ill. Nov. 22, 2010)..... 10

Yates v. Nichols,
286 F.Supp.3d 854 (N.D. Ohio 2017)..... 18

Statutes

Employee Retirement Income Security Act of 1974..... 2

ERISA.....*passim*

Other Authorities

Fed. R. Civ. P. 23(h)..... 6, 11

Manual for Complex Litig., (Fourth), § 14.121 (2004)..... 7

I. INTRODUCTION

This ERISA class action settlement represents an excellent result for the Settlement Class.¹ If approved by the Court, the Settlement will result in a \$15 million Settlement Fund, representing 26.5% of the reasonable best-case class damages as calculated by Plaintiff's expert. The Parties reached the Settlement after engaging in arm's length negotiations overseen by an experienced mediator of ERISA class litigation after more than four years of litigation that includes an earlier filed class action brought by Class Counsel involving the same claims.

To compensate them for the efforts that led to this result, Plaintiff's Counsel request a fee award of 33.33% of the \$15,000,000 Settlement Fund, or \$5,000,000, which recognizes their work on behalf of the Settlement Class, the risks they faced, and the high-quality of their work.² A one-third fee is the market rate for ERISA fiduciary breach class actions, even those with more established precedence and less risk.

Plaintiff's Counsel also request reimbursement of \$106,855.66 in litigation costs and expenses, and that the Court approve a Case Contribution Award to Plaintiff Christopher Snider of \$20,000 for his work on behalf of the Class. Mr. Snider actively participated in this action for more than a year and a half. He assisted in Plaintiff's

¹ Defendants are not opposed to the relief requested in this motion, without taking a position on Plaintiff's specific arguments and representations. As provided in the Settlement Agreement, the Settlement Agreement and these related motions are made in compromise of disputed claims and are not admissions by Defendants of any liability of any kind, whether legal or factual. Defendants specifically deny any liability or wrongdoing with respect to the claims and damages alleged in this action.

² Unless otherwise defined, all capitalized terms herein shall have the same meaning as set forth in the Parties' Settlement Agreement.

Counsel's investigation, responded to written discovery, sat for deposition, conferred with Counsel on settlement discussions, and was ready and willing to testify at trial against his former employer. Without his participation there would be no settlement.

The proposed Final Judgment and Order Approving Class Settlement and Dismissal with Prejudice, attached as Exhibit A to Plaintiff's Motion for Final Approval of Settlement and Certification of Settlement Class ("Motion for Final Approval"), includes language addressing these requests.

II. BACKGROUND

A. Plaintiff and His Counsel Vigorously Litigated On Behalf Of The Class

On September 28, 2020, Plaintiff Christopher Snider commenced this class action on behalf of all participants in the Seventy Seven Energy, Inc. Retirement & Savings Plan ("Plan") whose retirement Plan assets were invested in Chesapeake stock. Dkt. #1 ("Complaint"). This case arises out of the spin-off of Seventy Seven Energy, Inc. ("Seventy Seven") by Chesapeake Energy Corporation ("Chesapeake"). The Complaint alleged that Defendants violated the Employee Retirement Income Security Act of 1974 ("ERISA") in connection with the purchase of shares Chesapeake Energy Corporation ("Chesapeake") stock in the following three interrelated ways. First, Defendants breached their duty of prudence when they failed to remove Chesapeake stock as a Plan investment option on the day after the spin-off when it should have been clear that it was not a prudent investment option, and instead caused the Plan to purchase additional Chesapeake shares. Dkt. # 1 at ¶ 2. Second, Defendants breached their fiduciary duty when they failed to monitor the prudence of investment in Chesapeake stock during the Class Period and remove it as an

investment option for the Plan. *Id.*, ¶ 3. And finally, Defendants violated their duty under ERISA to diversify the Plan's investments. *Id.*, ¶ 4.³

Defendants moved to dismiss the Complaint. Dkt. 24. This Court granted the motion as to the claim for breach of the fiduciary duty claims to monitor the Plan's investments but denied the motion as to the two remaining claims. Dkt. 28. The parties then commenced class certification discovery in this case. Meanwhile, in the companion *Myers*' action, fact discovery began, and the parties agreed that the plaintiffs here would have the benefit of all discovery in *Myers*.

In summary, Plaintiff's Counsel negotiated a Rule 26 (f) report and participated in a Rule 16 conference and negotiated a Protective Order. Counsel then engaged in substantial discovery, including (1) written discovery, including preparing discovery requests, meeting and conferring with Defendants and reviewing responses and documents produced; (2) fact depositions; and (3) expert discovery, including preparing expert reports, responding to Defendants' expert reports and participating in expert document and deposition discovery. In addition to the motion to dismiss, Plaintiff's Counsel engaged in substantial motion practice regarding discovery issues and class certification. They participated in a mediation and prepared a mediation statement with supporting materials

³ The ERISA claims resolved by this Settlement were first raised in the class action filed in this Court by Kathleen Myers, through undersigned counsel, on February 24, 2017. *See Myers v. The 401(K) Fiduciary Committee For Seventy Seven Energy, Inc. A/K/A The Administrative Committee*, Case No. 17-200-D. Over the course of four years, a motion to dismiss was fully litigated, the parties conducted class, fact and expert discovery, and a motion for class certification was briefed and argued, and ultimately denied by this Court. This case had the benefit of counsel's work, including discovery, in the *Myers* action.

prior thereto concerning Defendants' fiduciary process and documents that accurately quantified the Plan's damages under Plaintiff's theories. Finally, they negotiated a settlement agreement and prepared all papers necessary for preliminary and final approval. See, generally, Declaration of Mark Boyko ("Boyko Decl."), ¶ 3; Declaration of Robert A. Izard ("Izard Decl."), ¶ 4.

B. Plaintiff and His Counsel Negotiated an Outstanding Settlement.

On February 15, 2022, the Parties mediated this matter with Robert A. Meyer, Esq. of JAMS, a recognized and respected mediator with national experience in ERISA cases generally and in cases concerning the selection of 401(k) investment options in particular. Boyko Decl., ¶ 12. Both Parties drafted and submitted comprehensive mediation statements to Mr. Meyer in advance of the mediation that focused all sides on the key issues. *Id.* Counsel for the Parties attended a full day, remote mediation. *Id.* The attendees vigorously engaged in the mediation process, during which all attendees' counsel made presentations to Mr. Meyer. *Id.* The Parties moved towards a settlement in principle and continued their negotiations thereafter. They were ultimately able to reach an agreement on April 18, 2022, which resulted in the Settlement currently before the Court. *Id.*

The proposed Settlement requires Defendants to pay \$15,000,000 into a Settlement Fund. Settlement Agreement, ¶¶ 1.13, 7.1. Subject to Court approval, the Settlement Fund will be used to make payments to Settlement Class members, pay the Settlement Administrator the costs of Class Notice and Settlement Administration Expenses, pay a Case Contribution Award in the amount of \$20,000 to the Named Plaintiff, subject to Court approval, and pay Plaintiff's Counsel's Attorneys' Fees in an amount not to exceed 33 1/3%

of the Settlement Amount and costs and expenses, subject to Court approval. *Id.*, ¶¶ 8.2, 10; *see also* Exhibit 1.A Class Notice, (Dkt # 40-2 at 7). Plaintiff’s counsel incurred litigation expenses total \$106,855.66, of which \$64,797.50, approximately 60%, was for experts. Boyko Decl. ¶¶ 29–30. After payment of Court-approved administrative expenses, attorneys’ fees and expenses, and a Case Contribution Award, the Settlement Fund will be distributed to Settlement Class members in accordance with the Plan of Allocation, based on the proportion of Chesapeake shares that each Settlement Class member held in the Plan relative to the total vested shares of all Settlement Class members in the Plan. Plan of Allocation, Settlement Agreement Exhibit 3, Dkt # 40-2. Class Members are not required to file claims.

There are 4,563 Settlement Class members to whom the Settlement Administrator, KCC, LLC (“KCC”) sent notice. See Declaration of Alex Thomas of KCC (“Thomas Decl.”), ¶ 3. Thus, the \$15,000,000 settlement amount represents an average of nearly \$3,300 per Class member before Court approved deductions. Boyko Decl. ¶ 31.

C. The Court Granted Preliminary Approval of the Proposed Settlement

On April 21, 2022, Plaintiff filed his Unopposed Motion for Preliminary Approval of Class Settlement and Certification of Class for Settlement Purposes. Dkt. 39. On May 19, 2022, this Court granted preliminary approval of the Settlement, certified the Settlement Class and approved the issuance of Class Notice. Dkt. 41.

D. The Parties Satisfied the Notice Requirements

The Notice Plan approved by the Court was implemented by the Parties. Class Notice was mailed to Settlement Class members in accordance with the schedule contained

in the Order granting preliminary approval, *id.*, and a website was established with detailed information about the Settlement. Thomas Decl. There have been no objections to this Motion to date.

III. ARGUMENT

A. Legal Standard For Attorneys' Fees Awards

Under Rule 23, when counsel obtain a settlement for a class, courts “may award reasonable attorney’s fees and nontaxable costs that are authorized by law or by the parties’ agreement.” Fed. R. Civ. P. 23(h); *Brown v. Phillips Petroleum Co.*, 838 F.2d 451, 453 (10th Cir. 1988); *see also* Fed. R. Civ. P. 23(h). Here, the requested fee is reasonable and is authorized both by the Settlement Agreement and by applicable law.

The Supreme Court “has recognized consistently that a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney’s fee from the fund as a whole.” *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). *See also Hitch Enterprises, Inc. v. Cimarex Energy Co.*, No. 11-13-W, 2013 WL 12090055, at *1 (W.D. Okla. July 2, 2013) (accord). Likewise, “reasonable expenses of litigation” may be recovered from a common fund. *See Mills v. Elec. Auto-Lite Co.*, 396 U.S. 375, 391–92 (1970).

In a common fund case like this one arising under federal law, the Tenth Circuit has expressed a preference for using a percentage of the fund method of calculating attorney’s fees. *Braver v. Northstar Alarm Servs., LLC*, No. 17-0383-F, 2020 WL 6468227, at *1 (W.D. Okla. Nov. 3, 2020) (in case brought under the federal Telephone Consumer Protection Act, awarding funds based on percentage method as the 10th Circuit prefers the

percentage of fund method when case arises under federal law), *citing Gottlieb v. Barry*, 43 F.3d 474, 483 (10th Cir. 1994), and *Uselton v. Commercial Lovelace Motor Freight, Inc.*, 9 F.3d 849 (10th Cir. 1993). *See also Rothe v. Battelle Mem'l Inst.*, No. 1:18-3179, 2021 WL 2588873, at *8 (D. Colo. June 24, 2021) and *Aragon v. Clear Water Prod. LLC*, No. 15-2821, 2018 WL 6620724, at *6 (D. Colo. Dec. 18, 2018) (both awarding funds based on percentage method in federal Fair Labor Standards Act common fund, noting Tenth Circuit prefers common fund percentage approach); *cf. Hitch Enterprises, Inc. v. Cimarex Energy Co.*, No. 11-13, 2013 WL 12090055, at *1 (W.D. Okla. July 2, 2013) (preferred approach in common-fund situations is the percentage of the fund method, in diversity case).

ERISA fiduciary breach class litigation is a national market, and courts nationwide award fees based on a percentage of the fund. *See, Kelly v. Johns Hopkins Univ.*, No. 16-2835, 2020 WL 434473, *6 (D. Md. Jan. 28, 2020) (“As courts have repeatedly recognized, complex ERISA class action litigation “involves a national market”), and at *3 (In ERISA fiduciary breach class action, “district courts have consistently recognized that a one-third fee is the market rate.”) (citations omitted); *Cates v. Trustees of Columbia Univ.*, No. 16-6524, 2021 WL 4847890, *3 (S.D.N.Y. Oct. 18, 2021) (“ERISA litigation involves a national market because the number of plaintiff’s firms which have the necessary expertise and are willing to take the risk and devote the resources to litigate complex claims is small.”). *See also*, Manual for Complex Litig., (Fourth), § 14.121 (2004) (“A common fund is itself the measure of success... [and] represents the benchmark from which a reasonable fee will be awarded.”)

When setting percentage fee awards in common fund cases, the Tenth Circuit requires the use of the applicable *Johnson* factors. *See Brown*, 838 F.2d at 454-55 (also noting that “rarely are all of the *Johnson* factors applicable; this is particularly so in a common fund situation.”) *Id.*

The twelve *Johnson* factors include:

(1) the time and labor involved; (2) the novelty and difficulty of the questions; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) the customary fee; (6) any prearranged fee—this is helpful but not determinative; (7) 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., citing *Johnson*, 488 F.2d at 717–19.

B. The Fee Request is Reasonable Under the Percentage Approach

1. The Requested Fee Amount is Consistent with Fees Approved by Courts in this Jurisdiction and Elsewhere in Common Fund Cases.

Counsel requests a fee of 33 $\frac{1}{3}$ % of the Settlement Fund. Courts in this circuit have recognized that “a contingency fee of one-third is relatively standard in lawsuits that settle before trial.” *In re Anadarko Basin Oil & Gas Lease Antitrust Litig.*, No. 16-209, 2019 WL 1867446, at *2 (W.D. Okla. Apr. 25, 2019); *Anderson v. Merit Energy Co.*, No. 07-916, 2009 WL 3378526, at *3 (D. Colo. Oct. 20, 2009) (“[t]he customary fee to class counsel in a common fund settlement is approximately one-third of the economic benefit bestowed on the class.”); *see also Cimarron Pipeline Construction, Inc. v. National Council on Compensation*, Case Nos. 89-822-T, 89-1186-T, 1993 WL 355466, at *2 (W.D. Okla. June

8, 1993) (an antitrust class action, noting that “[f]ees in the range of 30-40% of any amount recovered are common in complex and other cases taken on a contingent fee basis,” and finding that attorneys’ fees of one third of the common fund are “in line with comparable other cases, [and] consistent with prevailing case law of this circuit”); *Rothe v. Battelle Mem’l Inst.*, No. 1:18-3179, 2021 WL 2588873, at *8 (D. Colo. June 24, 2021) (awarding one third fee in FLSA case); *In re United Telecommunications, Inc. Sec. Litig.*, No. 90-2251, 1994 WL 326007 (D. Kan. 1994) (fee award of 33% on a recovery of \$28 million in securities case).⁴ In sum, Class Counsel’s one-third fee request is within the range of fees commonly approved.

The fee is also consistent with fees approved in other complex ERISA class actions throughout the country. *See Swain v. Wilmington Trust N.A.*, No. 17-71, D.I. 123 (D. Del.) (awarding one third fee); *Casey v. Reliance Trust Co.*, No. 18-424, D.I. 176) (E.D. Tex.) (same); *Bilewicz v. FMR Co.*, No. 13-10636, 2014 WL 8332137, at *6 (D. Mass. Oct. 16, 2014) (same); *Cates*, 2021 WL 4847890 (S.D.N.Y. Oct. 18, 2021) (same); *Pledger v. Reliance Trust Co.*, No. 15-4444, 2021 WL 2253497 (N.D. Ga. Mar. 8, 2021) (same); *Kelly*, 2020 WL 434473, *3 (awarding one third fee, “the market rate” for complex ERISA class actions); *Sims v. BB&T Corp.*, No. 1:15-732 & 1:15-841, 2019 WL 1993519, at *2 (M.D.N.C. May 6, 2019) (“A one-third fee is consistent with the market rate in complex ERISA matters such as this and reflects

⁴ In addition to these cases, a study of class action settlements approved by federal judges in 2006 and 2007, based on 668 decisions, found that fee awards ranging from 30% to 35% of the recovery constitute the most common category Brian T. Fitzpatrick, An Empirical Study of Class Action Settlements and Their Fee Awards, 7 JOURNAL OF EMPIRICAL LEGAL STUDIES 811 (2010).

a customary fee for like work.”); *In re Marsh ERISA Litig.*, 265 F.R.D. 128, 146 (S.D.N.Y. 2010) (awarding one third fee in ERISA 401(k) class action); *Stevens v. SEI Investments Co.*, No. 18-4205, 2020 WL 996418, at *12 (E.D. Pa. Feb. 28, 2020) (awarding one third of settlement fund and citing *In re Merck & Co., Inc. Vytorin ERISA Litig.*, 2010 WL 547613, at *9 (D.N.J. Feb. 9, 2010) (awarding one-third fee)); *In re Schering-Plough Corp. Enhance ERISA Litig.*, No. 08-1432, 2012 WL 1964451, at *1 (D.N.J. May 31, 2012) (awarding one third fee in ERISA case alleging defendants breached their fiduciary duties to Plan, particularly with regard to the Plan’s holdings of Schering–Plough stock); *High St. Rehab., LLC v. Am. Specialty Health Inc.*, No. 12-7243, 2019 WL 4140784, at *10 (E.D. Pa. Aug. 29, 2019) (awarding 33% fee in ERISA class action); *Krueger v. Ameriprise Fin., Inc.*, No. 11-2781, 2015 WL 4246879, at *2, 4 (D. Minn. July 13, 2015) (awarding one third fee and noting courts have consistently awarded one-third fees in ERISA breach of fiduciary duty cases); *Spano v. Boeing Co.*, No. 06-743, 2016 WL 3791123, at *2 (S.D. Ill. Mar. 31, 2016); *Will v. Gen. Dynamics Corp.*, No. 06-698, 2010 WL 4818174, at *3 (S.D. Ill. Nov. 22, 2010) (one-third fee consistent with market rate).

2. Application of the Applicable *Johnson* Factors Confirms the Requested Fee is Reasonable.

When evaluating a fee under the percentage method, the court applies the *Johnson* factors to see whether the fee is fair, reasonable and adequate. *See Brown*, 838 F.2d at 454–55. Not all of the factors apply in every case,⁵ and some deserve more weight than others

⁵ For example, *Johnson* factor 11 — the nature and length of the professional relationship with the client — is not relevant in a class action such as this one, where the professional relationship did not precede representation in this Action.

depending on the facts at issue. *Id.* at 456. The eighth *Johnson* factor—the amount involved in the case and the results obtained—is entitled to the most weight. *Brown*, 838 F.2d at 456 (holding this factor may be given greater weight when “the recovery [is] highly contingent and that the efforts of counsel were instrumental in realizing recovery on behalf of the class.”); Fed. R. Civ. P. 23(h), adv. comm. note (explaining for a “percentage” or contingency-based approach to class action fee awards, “results achieved is the basic starting point.”); *McClintock v. Enter. Crude Oil LLC*, No. 16-136-KEW, 2021 WL 6133884, at *4 (E.D. Okla. Mar. 26, 2021) (finding that the eighth *Johnson* factor—the amount involved in the case and the results obtained—weighs heavily in support of the requested fee); *Aragon v. Clear Water Prod. LLC*, No. 15-2821, 2018 WL 6620724, at *6 (D. Colo. Dec. 18, 2018) (“[T]he most critical factor in determining the reasonableness of a fee award is the degree of success obtained, “quoting *Farrar v. Hobby*, 506 U.S. 103, 114 (1992)); *Bear Ranch, L.L.C. v. Heartbrand Beef, Inc.*, 885 F.3d 794, 803 (5th Cir. 2018) (in evaluating fee request, the most important factor “is the degree of success obtained,” citing *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983) (“the extent of a plaintiff’s success is a crucial factor in determining the proper amount of an award of attorney’s fees”). Here, the results achieved, as well as all of the other applicable *Johnson* factors, support the fee requested.

a. Litigation of the Claims Required Substantial Time and Labor

Class Counsel have committed a combined total of over 2,000 hours to bring this combined litigation to a conclusion. Boyko Decl., ¶¶ 25–28; Izard Decl., ¶ 8; Colvin Decl.

¶ 8. These hours were reasonable and necessary to the vigorous prosecution and successful resolution of this complex class action.

As stated in the accompanying Boyko and IZard Declarations and described in detail in Section II.A-B, *supra*, the work performed by Class Counsel and their staff included: a thorough pre-suit investigation of the claims asserted in the Complaint; consulting with experts; briefing and arguing motions; comprehensive discovery; substantive motion to dismiss and class certification briefing; and negotiating and documenting the Settlement. Boyko Decl. ¶ 3. Discovery included the production of over 89,000 pages of documents and five depositions, including expert depositions for each side. *Id.* Class Counsel prepared for and engaged in a full day mediation and spent weeks documenting the Settlement after the mediation. The time and labor involved justify the requested fee. *See Aragon v. Clear Water Prod. LLC*, No. 15-2821, 2018 WL 6620724, at *5 (D. Colo. Dec. 18, 2018) (approving 1/3 fee based on a similar history).

b. The Case Presented Novel and Difficult Issues

The novelty and difficulty of a case's issues is a significant factor in awarding attorneys' fees. This case presented several layers of challenges that support the requested fee. First, "ERISA 401(k) fiduciary breach class actions are extremely complex and require a willingness to risk significant resources in time and money, with the uncertainty of recovery and the protracted and sharply-contested nature of ERISA litigation." *Bekker v. Neuberger Berman Group 401(k) Plan Investment Comm.*, 504 F.Supp.3d 265, 269 (S.D.N.Y. Dec. 1, 2020). "ERISA law is highly complex." *Smith v. Krispy Kreme Doughnut Corp.*, No. 05-187, 2007 WL 119157, at *2 (M.D.N.C. Jan. 10, 2007); *Amara*

v. Cigna Corp., 534 F. Supp. 2d 288, 296 (D. Conn. 2008) (“ERISA and the regulations under it, are often lamentably obscure – to describe them as a tangled web does not do them justice.”). Each ERISA class action presents new and significant challenges. As the court in *Hill v. Hill Bros. Constr. Co., Inc.*, No. 3:14-213, 2018 WL 280537, at *2 (N.D. Miss. Jan. 3, 2018) noted in awarding a 1/3 fee, “the complexity of the issues in this case require a high degree of legal skill, as ERISA is a niche practice.” This case was no exception.

Second, Plaintiff’s theory, that fiduciaries breached their duties by failing to timely divest of a legacy stock fund after a spin-off, is unique. Unlike, for example, securities fraud class actions, which have been litigated for decades, the law with respect to legacy stock funds is extremely limited. Moreover, as further discussed in section h, below, the few cases that have been litigated have met with limited success. Indeed, this is the first spin-off case of which Plaintiff’s counsel are aware that has been successfully resolved. But for the efforts of Class Counsel, it is virtually certain the Class would receive no relief as no other firm has been willing to accept the risks associated with claims of this nature, let alone on behalf of this particular Plan.

Third, the facts supporting Plaintiff’s core allegations were strongly contested by Defendants. Plaintiff and Defendants have vastly different views about Defendants’ potential liability and damages. The key question — whether the Defendants, as prudent fiduciaries, should have divested Chesapeake stock by the end of 2014 — is one that would have to be determined through expert testimony. Plaintiff and Defendants each retained experts that provided radically different opinions on this issue. The same is true regarding the amount of damages. This case truly is a battle of the experts.

Fourth, Defendants vigorously denied all Plaintiff's allegations, asserted affirmative defenses and otherwise defended its actions with respect to the prudence of offering Chesapeake stock. Among other arguments, Defendants contended that most 401(k) plans with stock funds for legacy employer stock retained the legacy stock for an extended period and that applying Plaintiff's damages methodology for a divestiture at a later point would have reduced or eliminated the claimed damages. Defendants also asserted that each individual participant was free to sell their Chesapeake Stock at any time, while Defendants froze the fund to new investment. Finally, the Chesapeake Stock outperformed Seventy Seven Energy Company Stock Fund over the relevant period.

c. Obtaining a Successful Outcome Required Skilled and Experienced Class Counsel.

The litigation of ERISA class actions is highly specialized and practiced by only a handful of firms. Moreover, the two firms representing Plaintiff here are alone in their willingness take on cases challenging the inclusion of legacy stock funds in a 401(k) Plan. Boyko Decl. ¶ 6. Plaintiff's Counsel in this case are well-qualified, with vast experience in this field as described in detail in the Boyko Decl. ¶¶ 4–11 and Ex. 1, and Izard Decl. Ex.1.

Bailey & Glasser has been recognized for their “extensive experience at the forefront” of ERISA class action litigation involving 401(k) plans. *Bekker v. Neuberger Berman Group 401(k) Plan Inv. Comm.*, 504 F.Supp.3d 265, 270 (S.D.N.Y. 2020). Partners Gregory Porter and Mark Boyko both have significant experience at the vanguard of ERISA class actions generally and cases challenging the inclusion of 401(k) investment options in particular, with over a decade of experience not only achieving meaningful

judgements and settlements, but also successfully handling appeals at the circuit and U.S. Supreme Court level. Boyko Decl. ¶¶ 4–11.

Izard Kindall & Raabe (“IKR”) has been lead or co-lead counsel in over 45 ERISA class actions, including company stock cases similar to this case. Izard Decl. Ex. 1 at 1–3. It has obtained 8 settlements in ERISA class actions worth \$40 million or more. *Id.* at 4. It was also on the executive committee of a case that settled for \$250 million. *Id.* Judges throughout the country have commented favorably on IKR’s expertise and results in ERISA class actions. *Id.* at 4–7.

Latham, Steele, Lehman, Keele, Ratcliff, Freije & Carter (“LSL”) is a sophisticated law firm that routinely engages in complex litigation, including class action litigation. LSL has familiarity with the district in which this matter is pending along with the knowledge, resources, and expertise to assist national counsel in class action litigation in this district.

Defendants are ably represented by effective and experienced counsel from two highly sophisticated firms, Baker Botts, and McAfee & Taft. Because of their experience, Plaintiff’s Counsel were able to efficiently and successfully handle the complex legal and factual issues this case presented on behalf of the Settlement Class, despite vigorous and resourced opposition, which further demonstrates their skill and experience.

d. Class Counsel Was Precluded from Taking on Other Work as a Result of this Litigation and the Time Limitations it Imposed.

The time Class Counsel spent on this case, on a purely contingent basis, was time that could not be spent on other cases. As set forth above in the preceding section, Class Counsel have a robust practice at the forefront of ERISA litigation. The schedule imposed

by this case and the commitment of time and labor the case required combined to preclude Class Counsel from taking on other matters while this case was in active litigation. Boyko Decl. ¶ 16. This factor weighs in favor of the fee requested. *See Chieftain Royalty Co. v. XTO Energy Inc.*, No. 11-29-KEW, 2018 WL 2296588, at *6 (E.D. Okla. Mar. 27, 2018) (finding this factor supported fee request where case was pending for years, and placed burden on counsel's time and resources).

e. The Fee is Consistent with the Customary Fee for Similar Work; and is Entirely Contingent.

Class Counsel took this case on a wholly contingent fee basis, and they have not received any compensation for their work to this point. Boyko Decl. ¶¶ 17–19; *see Chieftain Royalty*, 2018 WL 2296588, at *8 (E.D. Okla. Mar. 27, 2018) (recognizing relevance of contingency fee and risk of non-payment); *Aragon*, 2018 WL 6620724, at *6 (D. Colo. Dec. 18, 2018) (same). The fact that their compensation is contingent on obtaining a result for the Settlement Class is particularly relevant given the complexity and difficulty presented by ERISA fiduciary breach cases, and the possibility of non-recovery. Not only has counsel invested 2,063.15 hours of legal work, with no guarantee of payment, they have incurred \$106,855.66 in expenses. Class Counsel did so with the very real possibility of no recovery or a very limited recovery. Finally, the fee is consistent with fees awarded in similar cases, as described above in Section III.C.1.

f. The Results Obtained by Plaintiff and Class Counsel are Exemplary.

The proposed Settlement is an excellent result for the Class, with the Class receiving \$15 million, or 26.5% of the reasonable best-case damages determined by Plaintiff's expert

during the course of the litigation (not just for settlement purposes). Boyko Dec. ¶ 15. The benefits of the Settlement will be provided to all Class Members without the need to return a claim form, *see Chieftain*, at * 4–5 (the fact that payments to class members are automatically bestowed and require no claim form is a benefit to the class). Class Members have the option of receiving their distributions as direct rollovers into tax-qualified accounts, further increasing the value of the settlement through tax-preferred treatment.

The results achieved are particularly exemplary in light of the likelihood of further lengthy, expensive litigation and the risk that the Class would recover less — or possibly nothing at all. ERISA class settlements involving statutory claims that have been litigated much more frequently (and, thus, have more of a track-record) often settle for lower percentages of plaintiffs’ asserted damages. *See, e.g., Prince v. Eaton Vance Corp.*, No. 18–12098, Dkt. 57 (D. Mass Sept. 24, 2019) (approving settlement for 23% of total damages); *Richards-Donald v. Teachers Insurance & Annuity Ass’n of Amer.*, No. 15–8040 (S.D.N.Y.) (\$5 million settlement representing 11.6% of alleged damages); *Figas v. Wells Fargo*, No. 08–4546 (D. Minn.) (\$17.5 million settlement representing 19.5% of alleged damages); *Sims v. BB&T Corp.*, No. 15–732, 2019 WL 1993519, *2 (M.D.N.C. May 6, 2019) (\$24 million settlement representing 19% of alleged damages); *Urakhchin v. Allianz Asset Mgmt. of Amer., L.P.*, No. 15–1614, 2018 WL 8334858, *4 (C.D. Cal. July 30, 2018) (\$12 million settlement representing 17.7% of maximum alleged damages).

A certain recovery for the class now far outweighs the mere possibility of future relief after years of costly litigation. *See Aragon*, 2018 WL 6620724, at *3 (“Given the risks and costs of protracted litigation and uncertainty surrounding class members’ ability

to recover on a lump sum judgment, the Court finds that the immediate recovery provided for in the parties' settlement agreement outweighs the possibility of greater future relief.'"). ERISA class actions in general, and especially those advancing novel theories of liability tend to have even longer life-cycles even after trial. *See Tussey v. ABB, Inc.*, 850 F.3d 951 (8th Cir. 2017) (remanding on damages, case involving the first ERISA breach of fiduciary duty class action trial, which was held in 2010); *Tussey v. ABB, Inc.*, No. 06-4305, Dkt. 869 (W.D. Mo. Aug. 16, 2019) (granting final approval of settlement).

g. The Experience, Reputation and Ability of the Attorneys.

As discussed above in Section III.B.2.b, Plaintiff's Counsel in this case are well-qualified, with vast experience in ERISA and class action litigation.

h. The Undesirability of the Case.

As noted above, Class Counsel's work in this case involved a number of complex and difficult legal and factual issues, with uncertain outcomes, due in part to the unsettled nature of the law regarding claims concerning legacy stock funds. Class Counsel believe that they are the only two firms willing to bring these cases, which is no surprise given the risks associated with them. For example, *Yates v. Nichols* dismissed similar claims concerning a legacy stock fund that comprised 6.5% of the plan's assets. 286 F.Supp.3d 854 (N.D. Ohio 2017). Likewise, in *Schweitzer v. Inv. Comm. Of Phillips 66 Savings Plan*, a similar claim was dismissed, and the dismissal was affirmed on appeal. 960 F. 3d 190 (5th Cir. 2020). To date, no plaintiff has succeeded at trial, or even reached trial, asserting claims that a fiduciary imprudently failed to remove a legacy stock fund. In addition, the fact intensive inquiries underlying the Parties' opposing positions on liability and damages

would have led to a battle of experts and conflicting evidence and testimony, which would have placed the outcome of the litigation in doubt, because no party could reasonably be certain that its experts or evidence would carry the day. Even a decision in Plaintiff's favor would likely be followed by an appeal. Regarding class certification, although Plaintiff was confident he would prevail, Defendants could appeal that ruling as well, which might have delayed proceedings significantly.

“Contingent fees compensate lawyers for the risk of nonpayment. The greater the risk of walking away empty-handed, the higher the award must be to attract competent and energetic counsel.” *Silverman v. Motorola Solutions, Inc.*, 739 F.3d 956, 958 (7th Cir. 2013) (citation omitted). If the Court had ruled against Plaintiff at any juncture—either at the pleading stage, class certification, dispositive motions, or on appeal—Class Counsel would receive nothing for the time and expenses (including \$64,000 paid to experts) they invested in the case. There were and would remain many opportunities for this case to be derailed, and Class Counsel's willingness and ability to persist and bear those risks weigh in favor of the requested award.

i. Awards in Similar Cases

As discussed in Section III.B.1 above, the fee falls within the range of fees awarded in class actions in this jurisdiction and in ERISA cases across the country.

In summary, analysis of all of the relevant *Johnson* factors under federal common law demonstrates that the fee request should be approved.

C. The Fee Is Reasonable Under A Lodestar Crosscheck

“This Court has acknowledged the Tenth Circuit’s preference for the percentage method and rejected application of a lodestar analysis or a lodestar cross check.” *Chieftain* at *3 (E.D. Okla. Mar. 27, 2018). See, also, *Northumberland Cnty. Ret. Sys. v. GMX Res. Inc.*, No. 11-520-D, 2014 WL 12014020, at *3 fn. 1 (W.D. Okla. July 31, 2014); *White Fam. Mins., LLC v. EOG Res., Inc.*, No. 19-409-KEW, 2021 WL 6138867, at *3 (E.D. Okla. Nov. 12, 2021); *CompSource Oklahoma v. BNY Mellon, N.A.*, No. 08-469-KEW, 2012 WL 6864701, at *8 (E.D. Okla. Oct. 25, 2012).

Nonetheless, even if a lodestar cross check were applied, the fee would be reasonable. Here Plaintiff’s Counsel collectively spent over 2,000 hours of attorney and paraprofessional time to date prosecuting this Litigation behalf of the Settlement Class. See generally Boyko Decl. ¶¶ 26–28; Izard Decl., ¶ 8; Colvin Decl., ¶ 8. The resulting lodestar thus far is \$1,280,713. Boyko Decl. ¶ 28.

The hourly rates are reasonable for litigation of this nature. Boyko Decl. ¶¶ 24–28. Bailey & Glasser rates were presented to courts last year seeking approval of attorneys’ fees requests (*Casey v. Reliance Trust Co.*, 18-424 (E.D. Tex.) (Dkt. 175)) and in the District Court for Delaware (*Choate v. Wilmington Trust, N.A.*, 17-250 (D. Del.) (Dkt. 159)).⁶ In both instances the court granted the requests. The hourly rates shown on IKR’s chart are IKR’s normal rates for both hourly customers and class action work. Both firms operate national practices for ERISA class actions and neither charges differential rates

⁶ Counsel’s 2022 rates, as reflected in the Porter Declaration, represent a 5.9% increase from 2021 rates.

based on the location where a lawsuit is filed. As with Bailey Glasser's rates, courts have approved IKR's fees in class actions litigated all over the country. Izard Decl. ¶¶ 6–10.

Class Counsel's rates are consistent with (if not below) those of other firms practicing in ERISA fiduciary breach class actions. Boyko Decl. ¶¶ 25–27; Izard Decl. ¶10. For example, hourly rates found reasonable last year in *Cates* exceeded \$1,000 per hour. *Cates*, 2021 WL 4847890 at *3. The same is true of the AMLAW 100 rates reported by Valeo Partners for 2021. Boyko Decl. ¶ 27. “An attorney's requested hourly rate is prima facie reasonable when he requests that the lodestar be computed at his or her customary billing rate, the rate is within the range of prevailing market rates, and the rate is not contested.” *Heartland Payment Sys.*, 851 F. Supp. 2d at 1087 (citations omitted).

ERISA litigation is typically performed on a national level (as this is a national class), and several courts have noted that an ERISA attorney's work is not normally compensated based solely on the rates in the area in question. *See, e.g., Boxell v. Plan for Group Ins. of Verizon Commun., Inc.*, No. 1:13-89, 2015 WL 4464147, at *9 (N.D. Ind. July 21, 2015) (“ERISA is a specialized field with a limited number of attorneys who specialize in representing plaintiffs seeking disability benefits, and Ms. Boxell has adequately established that there is a national market for the services of those attorneys”); *Frommert v. Conkright*, No. 00-6311, 2016 WL 7186489, at *7 (W.D.N.Y. Dec. 12, 2016) (“in certain highly specialized areas of law, such as ERISA, the relevant legal community is national in scope. . . . [T]he hourly rates to be applied here are not strictly bound by what would be typical for counsel from this district.”).

ERISA class actions in other jurisdictions support the rates underlying counsel's fee request here. *See Cates*, 2021 WL 4847890, *3 (under lodestar crosscheck in ERISA case, court found rates of \$1,060–\$490 for attorneys and \$330 for paralegals reasonable); *Kelly v. Johns Hopkins Univ.*, 2020 WL 434473, *6 (D. Maryland Jan 28, 2020) (same); *Cunningham v. Wawa, Inc.*, 2021 WL 1626482, at *8 (E.D. Pa. Apr. 21, 2021) (court found rates of \$700–\$975 per hour reasonable); *Spano v. Boeing Co., No. 06-743*, 2016 WL 3791123, at *3 (S.D. Ill. Mar. 31, 2016) (under lodestar cross check, court found that reasonable rates were: for attorneys with 25 years of experience, \$998 per hour; for attorneys with 15–24 years, \$850 per hour; for attorneys with 5–14 years, \$612 per hour; for attorneys with 2–4 years, \$460 per hour; for paralegals and law clerks, \$309 per hour).

As discussed above, the amount of work and time was reasonable as well. The time reported was necessary to this successful outcome. In addition, the reported time was adjusted downward in the exercise of billing judgment. Boyko Decl. ¶ 24.

The requested fee will result in a lodestar enhancement of 3.9, which is well within the range approved by courts in this Circuit. *Mishkin v. Zynex, Inc.*, No. 09-780, 2012 WL 4069295, at *2 (D. Colo. Sep. 14, 2012) (collecting federal district court cases approving lodestar multipliers ranging from 2.5 to 4.6); *Cook v. Rockwell Int'l Corp.*, No. 90181, 2017 WL 5076498, at *4 (D. Colo. April 28, 2017 (“The range of multipliers in large and complicated class actions have ranged from 2.26 to 4.5.”)). Further, if Class Counsel's hours were applied to approved rates from ERISA class action practitioners in *Kelly* and *Cates*, the lodestar multiplier would be reduced to 3.1. Boyko Decl. ¶ 29.

While this Court opposes using a lodestar cross check, *Chieftain Royalty Co* at *3, given the exceptional results achieved for the class and unique risks accepted by Counsel, the fee is reasonable under the lodestar cross-check.

D. Class Counsel’s Request to be Reimbursed \$106,855.66 in Expenses Advanced to the Class is Reasonable and Appropriate.

Attorneys whose work creates a common fund are routinely reimbursed for the reasonable expenses they incurred to bring the case. *Tuten v. United Airlines, Inc.*, 41 F. Supp. 3d 1003, 1009 (D. Colo. 2014) (finding that class counsel's incurred expenses are reasonable, and that counsel is entitled to recover its expenditures), citing *Vaszlavik v. Storage Tech. Corp.*, 2000 WL 1268824, at *4 (D.Colo. Mar. 9, 2000).

In prosecuting this matter, combined Class Counsel have incurred \$106,855.66 in out-of-pocket expenses for the benefit of the Class by the time of final approval. Boyko Decl. ¶¶ 30–31; Izard Decl. ¶ 11; Colvin Decl. ¶ 10. These expenses include experts’ fees, deposition transcripts and videographer services, data hosting and e-discovery costs, mediation fees, and filing fees. Boyko Decl. ¶ 30. As detailed in Class Counsel’s accompanying declarations, each expense was actually incurred, and was both reasonable and necessary to prosecute this litigation. Litigation involving 401(k) plan investment selection typically require extensive expert involvement for the critical issues of liability and damages. This case was no different. Expert fees are the sort of expenses that attorneys in non-contingency cases generally charge to their paying clients. Accordingly, these expenses should be reimbursed.

E. A Case Contribution Award of \$20,000 is Appropriate

Courts in this jurisdiction and elsewhere regularly give case contribution or service awards to “compensate named plaintiffs for the work they performed—their time and effort invested in the case.” *Chieftain Royalty Co. v. Enervest Energy Institutional Fund XIII-A, L.P.*, 888 F.3d 455, 468 (10th Cir. 2017), citing *Cobell v. Salazar*, 679 F.3d 909, 922–23 (D.C. Cir. 2012) (district court did not err in finding that lead plaintiff’s “singular, selfless, and tireless investment of time, energy, and personal funds to ensure survival of the litigation [merited] an incentive award”); *Fankhouser v. XTO Energy, Inc.*, No. 07-798-L, 2012 WL 4867715, at *3 (W.D. Okla. Oct. 12, 2012) (approving service awards from \$10,000 to \$40,000, based on fact that the action and the settlement would not have been possible without the efforts of the plaintiffs); *In re Anadarko Basin Oil & Gas Lease Antitrust Litig.*, No. 16-209-HE, 2019 WL 1867446, at *3 (W.D. Okla. Apr. 25, 2019) (approving service awards to compensate plaintiffs for expending time and effort that led to a settlement for the benefit of class members, including searching for and collecting documents, sitting for interviews with counsel, preparing for a deposition). A case contribution award may also compensate a plaintiff for the risk he or she incurs in bringing a lawsuit. *UFCW Loc. 880-Retail Food Emps. Joint Pension Fund v. Newmont Min. Corp.*, 352 F. App’x 232, 235 (10th Cir. 2009); *Braver v. Northstar Alarm Servs., LLC*, No. 17-383-F, 2020 WL 6468227, at *5 (W.D. Okla. Nov. 3, 2020) (approving service award of \$20,000, citing risk to plaintiff of non-recovery as a factor).

Plaintiff requests a case contribution award of \$20,000 for his efforts in obtaining benefits for the Class. Over the last one and a half years, he has regularly communicated

with Class Counsel about the case, put himself at risk of potential counterclaims, gathered and reviewed documents to respond, and took time to prepare and then sit for his deposition. He undertook those efforts without the promise of any benefit other than what the other Plan participants might receive. Boyko Decl. ¶ 35.

Plaintiff's request of \$20,000 is well within the range of awards approved by courts in this Circuit and elsewhere. *See* cases cited *supra*; *see also Choate*, 17-250 (D.I. 159) (approving \$20,000 service award in ERISA case); *Casey*, 18-424 (D.I. 176) (approving \$25,000 service award in ERISA case); *see also Cates* at *9 (awarding \$25,000 to each of 7 class representatives in ERISA case); *Kelly* at *8 (awarding \$20,000 to each of 8 class representatives in ERISA case); *Bekker*, 504 F.Supp.3d at 271 (awarding \$20,000 to the lone class representative in a case challenging one fund in a 401(k) plan, while noting the risks associated with suing a former employer and the fact that, "as the sole class representative the litigation could not have continued without him."); *McBean v. City of New York*, 233 F.R.D. 377, 391–92 (S.D.N.Y. 2006) (approving incentive awards of \$25,000–\$35,000, which are "solidly in the middle of the range").

IV. CONCLUSION

For all the foregoing reasons, the Court should grant Plaintiff's Motion for Award of Attorneys' Fees and Costs and for a Named Plaintiff's Case Contribution Award to Mr. Snider. Specifically, the Court should award Class Counsel \$5,000,000 in fees and \$106,855.66 in expense reimbursement and \$20,000 to Mr. Snider, with all payments coming from the settlement fund.

Dated: July 3, 2022

Respectfully submitted,

/s/ Mark G. Boyko

Mark G. Boyko (admitted *pro hac vice*)
BAILEY & GLASSER LLP
34 N. Gore Ave. – Suite 102
Webster Groves, MO 63119
Telephone: (314) 863-5446
Facsimile: (314)-863-5483

Gregory Y. Porter (admitted *pro hac vice*)
Ryan T. Jenny (admitted *pro hac vice*)
BAILEY & GLASSER LLP
1055 Thomas Jefferson Street, NW, Suite 540
Washington, DC 20007
Tel: (202) 463-2101
Fax: (202) 463-2103
E-mail: gporter@baileyglasser.com
E-mail: rjenny@baileyglasser.com

IZARD KINDALL & RAABE LLP
Robert A. Izard (admitted *pro hac vice*)
Douglas P. Needham (admitted *pro hac vice*)
29 South Main Street, Suite 305
West Hartford, CT 06107
Tel: (860) 493-6292
Fax: (860) 493-6290
E-mail: rizard@ikrlaw.com
E-mail: dneedham@ikrlaw.com

**LATHAM, STEELE, LEHMAN, KEELE,
RATCLIFF, FREIJE & CARTER, P.C**
Bob L. Latham, OBA No. 15799
James Colvin, OBA No. 20654
1515 E. 71st Street, Suite 200
Tulsa, OK 74136
Telephone: (918) 970-2000
Facsimile: (918) 970-2002
E-mail: blatham@law-lsl.com
E-mail: jcolvin@law-lsl.com

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on July 3, 2022, I electronically transmitted the foregoing document to the Clerk of Court using ECF System for filing and transmittal of a Notice of Electronic Filing to the counsel of record for the Defendants.

/s/ Mark G. Boyko
Mark G. Boyko

CERTIFICATE OF CONFERENCE

I hereby certify that on July 3, 2022, I conferred with counsel for the Defendants. Defendants are not opposed to the relief requested in this motion. Defendants take no position on Plaintiff's specific arguments and representations.

/s/ Mark G. Boyko
Mark G. Boyko

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

CHRISTOPHER SNIDER, on behalf of the)
Seventy Seven Energy Inc. Retirement &)
Savings Plan and a class of similarly)
situated participants of the Plan,)
Plaintiff,) Case No. CIV-20-977-D
v.)
ADMINISTRATIVE COMMITTEE,)
SEVENTY SEVEN ENERGY INC.)
RETIREMENT & SAVINGS PLAN; et al.)
Defendants.

**DECLARATION OF MARK G. BOYKO
IN SUPPORT OF PLAINTIFF’S MOTION FOR ATTORNEYS’S FEES,
REIMBURSEMENT OF EXPENSES, AND CLASS REPRESENTATIVE
AWARD**

I, Mark G. Boyko, declare as follows:

1. I make this Declaration of my own personal knowledge, and if called as a witness, I would and could testify competently to the matters stated herein.
2. I am a partner of the law firm Bailey & Glasser LLP, representing the plaintiff.
3. Myself and my partner, Gregory Porter, have been actively involved in all stages of this litigation, including investigating and preparing the Complaint, defending against Defendants’ Motion to Dismiss, seeking discovery, reviewing documents, defending Plaintiff’s deposition, hiring experts, and settling this litigation. Our investigation included reviewing the Plan’s investment options and expenses, the merits

of the Chesapeake Stock Fund and other Plain investments, and assessing the novel arguments and practices surrounding the use of non-employer stock funds following spin-off transactions generally. With co-counsel from Izard, Kindall & Raabe, we conducted years of investigation and litigation leading up to the filing of the Complaint in this case, which benefitted the Class in various ways including, most directly, giving us a sufficient understanding of the facts, strength of claims, and damages to allow us to prudently settle on behalf of the Class.¹ We consulted with experts, briefed and argued numerous motions and conducted discovery, including review of over 89,000 pages of produced documents and five depositions, including expert depositions for each side.

4. I have been working on ERISA class actions since 2007. My partner, Gregory Porter, has been working on class actions since 1998. He and I have served together as lead or co-lead counsel for plaintiffs in many important ERISA cases, including *Intel v. Sulyma*, 140 S. Ct. 768 (2020) (ongoing case regarding the prudence and diversification of certain options in a 401(k) plan), *Bekker v. Neuberger Berman Plan Inv. Comm.*, No. 16-6123 (S.D.N.Y) (\$17 million settlement in class action concerning the prudence of one fund in a 401(k) plan), *Cryer v. Franklin Resources, Inc.*, No. 16-4265 (N.D. Cal.) (\$26.9 million settlement in class action concerning the prudence and loyalty of offering proprietary investments in a 401(k) plan), *Leber v.*

¹ The first attempt at obtaining a recovery for this class was in the *Myers* case. As our work across both cases is applicable to and benefitted the class this case, including the express use of documents produced and depositions taken for purposes of both matters and this settlement. No work or expenses in either matter has been compensated, and so it is included here.

Citigroup 401(k) Plan Inv. Comm., No. 07-9329 (S.D.N.Y.) (class settlement concerning prudence and fees of certain plan investment options), *Schultz v. Edward D. Jones & Co., L.P.*, No. 16-cv-1346 (E.D.Mo) (same).

5. Mr. Porter and I have also represented ERISA plan participants in cases challenging fiduciary decisions to continue offering legacy stock from a parent company after a spin-off, including *Stegemann v. Gannet Co., Inc*, 970 F.3d 465 (4th Cir. 2020), which Mr. Porter argued before the Fourth Circuit and which resulted in the court vacating the district court's decision to dismiss claims that the defendant fiduciaries breached their duties of prudence and diversification by continuing to invest in legacy stock.

6. Along with our co-counsel, Izard, Kindal, and Raebe, ("IKR"), we are the only firms I am aware of who represent classes of participants alleging that the inclusion of legacy stock in a 401(k) plan was imprudent. I am not aware of any class settlements based on claims asserting that theory of liability nor am I aware of any courts finding that legacy stock was imprudent or rendered a 401(k) plan undiversified in violation of ERISA.

7. I have additional experience in comparable cases including *Krueger v. Ameriprise Fin.*, No. 11-2781 (D. Minn.) (\$27 million settlement of class action concerning the prudence of certain options in 401(k) Plan), *Spano v. The Boeing Co.*, No. 06-743 (S.D. Ill.) (\$57 million settlement of class action concerning the prudence and diversification of a 401(k) plan); *Tibble v. Edison, Int'l*, 135 S.Ct. 1823 (2015) (settlement after trial of case concerning prudence of certain 401(k) Plan investments;

Tussey v. ABB, Inc., No. 06-4305 (W.D.Mo.) (same). In total, my ERISA class actions have resulted in over \$500 million in judgments and settlements on behalf of plans across the country.

8. Mr. Porter also has direct experience in cases involving complex financial products and services and fiduciary decision making about investments. *See Diebold v. Northern Trust*, No. 09-1934 (N.D. Ill.) (\$34 million cash settlement in 2015); *Anderson v. Principal Life Ins. Co.*, No. 15-0119 (S.D. Iowa) (\$3 million cash and \$8.5 million in prospective relief in 2015); *Glass Dimensions, Inc. v. State Street Bank & Trust Co.*, No. 10-10588 (D. Mass.) (\$10 million cash settlement in 2014); *In re CMS Energy ERISA Litig.*, No. 02-CV-72834 (E.D. Mich.) (\$28 million recovered); *Sherrill v. Federal-Mogul Corp. Retirement Programs Committee*, No. 04-CV-72949 (E.D. Mich.) (\$14 million recovered); *Bilewicz v. FMR LLC*, No. 13-10636 (D. Mass.) (\$12 million cash and substantial prospective relief in 2014); *Figas v. Wells Fargo*, No. 08-04546 (D. Minn.) (\$17.5 million settlement in 2011). All of the cases listed above were about retirement plan fiduciaries making imprudent investment decisions. The *Northern Trust* and *Glass Dimensions* cases involved complex securities lending transactions involving hundreds of retirement plans. In those cases, Mr. Porter was the chief architect of the complaints, led the expert discovery for the plaintiffs, and successfully argued several key motions. In December of 2016, he led a team of lawyers in an ERISA case that resulted in a \$30 million judgment. *Halldorson v. Wilmington Trust Ret. & Inst'l Services Co.*, No. 15-1494 (E.D. Va.).

9. Earlier this year, Mr. Porter was recognized by Chambers and Partners as being in the top band, “Band 1” for ERISA Litigation: Mainly Plaintiffs. Including Mr. Porter, only six attorneys achieved that distinction, the highest available. Chambers rankings are based on factors including technical legal ability, professional conduct, client service, diligence and commitment.

10. Mr. Porter has also represented defendants in complex ERISA cases. He was part of the defense trial team in an ERISA class action against Prudential Life Insurance Company, which resulted in a verdict for the defendants. *See Dupree v. The Prudential Ins. Co. of Am.*, No. 99-8337, 2007 WL 2263892 (S.D. Fla. Aug. 7, 2007). In addition, he represented defendants in several of the earliest cases involving imprudent investments in employer stock, including *Koch v. Dwyer*, No. 98-5519 (S.D.N.Y.); *Tittle v. Enron*, No. 01-3913 (S.D. Tex.); and *Rankin v. Rots*, No. 02-CV-71045 (E.D. Mich.).

11. A firm resume for Bailey Glasser and its lead attorneys is attached as Exhibit 1.

12. Throughout the life of this case, the Parties engaged in numerous settlement discussions including an all-day mediation on February 15, 2022. In connection with their settlement negotiations, the Parties exchanged information regarding their views on the merits, strengths, and weaknesses of the actions, risks of litigation, available insurance, and the financial impact to Defendants, the Class, and the Plan, with respect to any judgment or settlement. This information included fiduciary

committee meeting agendas, minutes, and materials as well as reports from third-party consultants.

13. The Parties mediated this matter with Robert A. Meyer, Esq. of JAMS. Mr. Meyer is a recognized and respected mediator with national experience in ERISA class cases including cases concerning the selection and maintenance of allegedly imprudent investment options in a 401(k) plan. In preparation for the mediation, the parties submitted detailed mediation statements to each other and Mr. Meyer. During the mediation, we presented additional arguments and factual details to Mr. Meyer. Aided by Mr. Meyer, the Parties reached an agreement in principle to settle this litigation. At that point the Parties began working toward a complete settlement on all terms and Plaintiff took the lead on drafting many of the settlement documents, including the Plan of Allocation, Proposed Notice, Motion for Preliminary Approval, and Proposed Orders. The Parties continued to negotiate details of the settlement, and were ultimately able reach a full agreement on April 18, 2022, which is reflected in the Settlement currently before the Court.

14. Plaintiff also sent bid requests to three experienced settlement administrators and received responses from each. After reviewing these bids, Plaintiff consulted with Defendant and selected KCC Settlement Services, which estimated administrative costs to be below \$35,000. Counsel worked with KCC and defense counsel to identify who should be included on the class notice list, reviewed the final drafts of the Settlement Notices, and ensured that they were timely mailed by KCC. We have also worked with KCC to create a settlement website and telephone line for Class

Members who wished to obtain additional information about the Settlement, and have responded to questions from Class Members.

15. In litigating this class action, Class Counsel retained Steve Pomerantz, Ph.D. as an expert to calculate damages based on the fees and performance of the Chesapeake Stock Fund. Plaintiff also obtained individualized holdings by Plan Participants on an annual basis during the Class Period. Dr. Pomerantz calculated that the Plan as a whole lost \$56,644,541 compared to the performance it would have had if the Chesapeake Stock removed and re-invested in the Plan's Target Date Funds during 2014. If damages were measured by performance using later starting dates or different comparators, damages would be significantly less — or potentially negative. The \$15,000,000 settlement represents 26.5% of the damages Dr. Pomerantz calculated.

16. Class Counsel carefully manages its caseload to ensure that it has the human and financial resources to vigorously prosecute class actions on behalf of its clients. ERISA class actions require substantial investments of time and money. While the instant case was pending, Class Counsel declined representation in several cases, in part due to resource constraints.

17. The Settlement provides for the payment of attorneys' fees, costs and expenses to Class Counsel following application for and Court approval of such an award. The compensation for the services Class Counsel rendered to the Class is wholly contingent. Class Counsel has worked without compensation or reimbursement for their time and out-of-pocket expenses necessary to position this case for settlement. Any fees and reimbursement of expenses will be limited to the amount awarded by the Court.

18. The attorney-client agreement between Class Counsel and Plaintiff provides that counsel would seek up to one third of any recovery as fees and Class Counsel agreed to work on a contingent basis and advance all costs of this litigation.

19. Plaintiff and Class Counsel agreed that Class Counsel would receive reimbursement for their costs from the value of a successful settlement or judgment. The Named Plaintiff entered into a contingency representation agreement with Class Counsel for a fee of up to 33 1/3% of the recovery, plus reimbursement of expenses and costs.

20. The information in this declaration regarding the firm's time and expenses is taken from time and expense reports and supporting documentation prepared and/or maintained by the firm in the ordinary course of business. These reports (and backup documentation where necessary) were reviewed in connection with the preparation of this declaration. As a result of this review, reductions were made to both time and expenses in the exercise of billing judgment.

21. As detailed below, Bailey & Glasser, Izard, Kindall and Raabe, and Latham, Steele, Lehman, Keele, Ratcliff, Freije & Carter, PC ("LSL") have collectively expended over 2,000 hours litigating this case since its inception. The total requested fee of \$5,000,000 represents 33 1/3 percent of the Settlement Fund. The total lodestar as of this date is \$1,285,753, which would result in a lodestar multiplier of 3.89.

22. The below summary of time and expenses was taken from computer-based timekeeping programs, in which Bailey & Glasser maintained their fees and expense records.

23. Bailey & Glasser's fee summaries demonstrate the amount of time spent on this litigation and how Class Counsel's lodestar was calculated, when combined with the declarations of Robert IZard and James L. Colvin with respect to their firms' time and expenses.

24. The time records also do not include work performed on this Motion. None of the expenses sought to be reimbursed include any expenses incurred relating to seeking reasonable attorneys' fees and expenses in this matter. Billing entries by summer associates and by billers who charged less than 5 hours on this matter were also excluded. The time records below do reflect anticipated future billings of 30 hours divided between Mr. Porter (5 hours), Mr. Boyko (20 hours) and Ms. Babiek (5 hours), which reflect anticipated future time spent preparing briefing and related material in support of the Fairness Hearing, attending the Fairness Hearing, communicating with class members, overseeing distributions to the Class, and enforcing compliance with the Settlement Agreement.

25. The hourly rates of timekeepers reflect the hourly rates used in similar matters and engagements, given the skills and experience required to litigate cases of this nature. In addition, I have also provided for illustration purposes the billing rates and lodestar that would be reflected at hourly rates charged by billers of the same experience level by one of the few other plaintiff firms practicing in this area as reflected by their approved rates in *Kelly v. Johns Hopkins Univ.*, No. 16-cv-2835, 2020 WL 434473 (D. Maryland Jan. 28, 2020) and *Cates v. Trustees of Columbia Univ.*, No. 16-6524, 2021 WL 4847890, *3 (S.D.N.Y. Oct. 18, 2021).

26. The time records indicate the following hours worked:

| Name | Position | Hours | Hourly Rate | Lodestar | Rate under Kelly and Cates | Lodestar under Kelly and Cates |
|-----------------|-----------------|----------------|--------------------|------------------|-----------------------------------|---------------------------------------|
| Greg Porter | Partner | 160.8 | \$900 | \$144,720 | \$1,060 | \$170,448 |
| Ryan Jenny | Partner | 81.8 | \$750 | \$61,350 | \$900 | \$73,620 |
| Mark Boyko | Partner | 560.9 | \$650 | \$364,585 | \$900 | \$504,810 |
| Alex Serber | Associate | 17.5 | \$425 | \$7,438 | \$490 | \$8,575 |
| Laura Babiak | Associate | 112.6 | \$370 | \$41,662 | \$370 | \$41,662 |
| Melissa K. Clay | Paralegal | 24.1 | \$265 | \$6,386 | \$330 | \$7,953 |
| Melissa Chapman | Paralegal | 29.0 | \$275 | \$7,975 | \$330 | \$9,570 |
| Violet Ramos | Paralegal | 181.5 | \$265 | \$48,097 | \$330 | \$59,895 |
| Total | | 1,168.2 | | \$682,213 | | \$876,533 |

27. Class Counsel's hourly rates are reasonable and appropriate for a lawsuit of this kind. ERISA class actions are a national practice operating exclusively in federal courts throughout the country. The defendants generally hire AMLAW 100 law firms to represent them—in this case Baker Botts LLP. The 2021 AMLAW 100 hourly benchmark rates for class actions, as reported by Valeo are all above the rates my firm bills for each attorney and paralegal:

| Position | Bailey Glasser Equivalent Biller(s) | Benchmark Rate |
|-----------------|--|-----------------------|
| Sr. Partner | Gregory Porter | \$1,029 |
| Partner | Mark Boyko, Ryan Jenny | \$863 |
| Associate | Laura Babiak, Alex Serber | \$532 |
| Support Staff | Melissa Chapman, Melissa K. Clay, Violet Ramos | \$453 |

28. Including the time reported by the other firms representing the Class, the total lodestar is:

| Firm | Hours | Lodestar | Lodestar under <i>Kelly</i> and <i>Cotes</i> |
|--------------------|-----------------|--------------------|---|
| Bailey Glasser LLP | 1,168.2 | \$682,213 | \$876,533 |
| IKR | 768.75 | \$564,365 | \$627,362 |
| LSL | 126.2 | \$34,135 | \$90,185 |
| Total | 2,063.15 | \$1,280,713 | \$1,594,080 |

29. Thus, the lodestar multiplier is 3.9, although based on the rates a similar firm practicing in the ERISA 401(k) class action space, and approved in *Kelly* and *Cotes*, the lodestar multiplier would drop to 3.1.

30. I personally managed, delegated, and supervised the allocation of personnel and expenses employed by my firm in this case. We have aggressively and vigorously prosecuted this case and represented the best interests of the Plaintiff and the participants and beneficiaries of the Plan. Over the course of the litigation, we incurred the following expenses, all of which were necessary and appropriate for the prosecution of this case, and are of the type that are customarily incurred in litigation and routinely charged to clients billed by the hour:

| Expense Category | Amount |
|--|---------------------|
| Document Hosting and Production | \$ 23,164.32 |
| Expert Witness Costs | \$ 64,797.50 |
| Fees, Filing, Service of Process, Pro Hac Vice | \$ 375.40 |
| Outside Delivery Services (FEDEX, etc.) | \$ 139.98 |
| Travel | \$ 970.96 |
| Deposition Transcripts | \$ 6,745.61 |
| Mediation costs | \$ 7,975.00 |
| Total | \$104,168.77 |

31. Including the expenses incurred by the other firms representing the Class, the total amount incurred is:

| Firm | Amount |
|----------------|---------------------|
| Bailey Glasser | \$104,168.77 |
| IKR | \$1,649.63 |
| LSL | \$1,037.26 |
| Total | \$106,855.66 |

32. The Settlement Administrator, KCC, LLC, has informed me that there are 4,563 distinct class members. If the \$15,000,000 settlement were divided equally among them, each class member would receive \$3,287.31. Under the Plan of Allocation each individual will receive a payment based on their personal investments in the Chesapeake Stock Fund.

33. As of July 1, 2022, my office has not received any objections to the Settlement or the requested Attorneys' Fees, Expenses and Named Plaintiff Incentive Award.

34. The Chesapeake Stock Fund has been removed from the Plan.

35. In addition to the time and commitment demonstrated by Counsel, I have witnessed the time and effort spent by Mr. Snider. This has included meetings and updates with Counsel, assisting in the investigation of his, and the Class', claims, reviewing and responding to discovery requests, and preparing and sitting for his deposition.

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

Executed in St. Louis, Missouri, this 1st day of July, 2022.

/s/ Mark G. Boyko

Mark G. Boyko

BAILEY GLASSER

ERISA, Employee Benefits & Trust Litigation

Bailey Glasser handles class actions and high stakes individual actions involving employee pension benefits—including employee stock ownership plans (ESOPs), 401(k) plans and other defined contribution or individual account plans, and traditional defined benefit pension plans—and trust litigation involving family and other private trusts. We litigate these actions throughout the United States under the federal employee benefits law known as the Employee Retirement Income Security Act (ERISA) and under state trust law.

Our clients include employees, former employees, retirees, and trust beneficiaries, as well as businesses and other professionals victimized by fraud, investment mismanagement, hidden and undisclosed fees, and illegal benefit cutbacks. We have recovered hundreds of millions of dollars for our clients in litigation claiming breaches of fiduciary duty, prohibited transactions, and other violations of the law. Our fiduciary duty practice also includes claims in the growing area of ERISA welfare benefit plan litigation, such as claims challenging systematic denials of treatments under medical plans under policies that violate ERISA.

ESOPs

Bailey Glasser focuses on ESOPs that invest in private companies. Federal pension law provides generous tax subsidies to shareholders and companies that sell their stock to an ESOP. In exchange for these tax benefits, federal law requires that an independent trustee decides whether the stock transaction should happen. Independent trustees are supposed to act like a hypothetical prudent buyer in the market for a private company. Unfortunately, in our experience, these trustees do not conduct adequate due diligence, do not have a sophisticated understanding of corporate transactions, and are more interested in collecting trustee fees paid by the employer than doing their job.

The US Department of Labor has long identified ESOPs as an enforcement priority due to rampant abuses by plan service providers, and the firm has worked closely with the DOL on lawsuits. Bailey Glasser's ESOP practice strives to obtain real money for our clients and create real changes in the industry.

Multi-Trust Class Actions

Bailey Glasser's ERISA team has deep experience with complex, multi-plan class actions involving esoteric trading practices and opaque financial products. We represented hundreds of retirement plans in class actions against major financial institutions engaged in conflicted and imprudent securities lending practices that cost the plans millions. In one such case, against Northern Trust Company in Chicago federal court, we recovered \$36 million for our clients. We also successfully prosecuted a

BAILEY GLASSER

complex, unlawful tax-fee against BNY Mellon on behalf of thousands of family trusts, ultimately recovering millions for our clients. Currently, we are prosecuting an ERISA class action against Intel Corp. involving poor performing hedge funds and private equity investments.

401(k) Plans

Bailey Glasser has a long history of representing employees and retirees harmed by hidden or excessive fees, or imprudent investments, in their 401(k) plans. Our experienced team understands the various ways financial-services companies can profit from workers' hard-earned retirement savings. We have successfully litigated at all levels, including the United States Supreme Court, recovered over \$100 million on behalf of our clients, and provided meaningful improvements to retirement plans across the country.

Pension Plans

Our team represents plan participants and beneficiaries in claiming the benefits that they were promised, and earned, under the written terms of their pension plans. In addition, plan sponsors are prohibited by law from amending qualified plans to decrease participants' "accrued benefits" and from eliminating or reducing certain "protected benefits." We have attorneys experienced in "anti-cutback rule" litigation. Bailey Glasser has recently been spearheading litigation alleging that actuarial assumptions used to determine optional forms of benefits or early retirement benefits are outdated. We are seeking losses to participants caused by use of outdated actuarial assumptions that cause benefits to be paid that are not actuarially equivalent to the annual monthly benefit (typically expressed as a single life annuity) payable at normal retirement age.

Trust Litigation

We understand how trustees, money managers, and investment advisors operate, and know how to spot hidden fees and mismanagement. Bailey Glasser recently finalized a nationwide class action on behalf of private family trusts who were being charged hidden fees by a large bank.

Health and Medical Plans

Our team members collectively have decades of experience in ERISA fiduciary duty litigation. We represent participants and beneficiaries in health care and medical plans to challenge systematic denials of treatments under policies that violate ERISA, and violations of mental health parity law.

BAILEY GLASSER

Experience Includes

Making the Law

- Won a unanimous decision in the United States Supreme Court in *Sulyma v. Intel Corp*, a case brought on behalf of participants in Intel's 401(k) plan concerning alleged imprudent investments in several of the Plan's investment options. The Supreme Court decision set new standards for ERISA's statute of limitations.
- Won a \$30 million trial judgment in *Brundle v. Wilmington Trust*, a case involving multiple breaches of duty by the trustee and complex valuation issues in an ESOP transaction; won a complete affirmance by the US Court of Appeals for the Fourth Circuit, establishing new law on ESOPs that has been cited nationwide.
- Obtained a precedent-setting decision by the US Court of Appeals for the Seventh Circuit in *Allen v. GreatBanc Trust Co.*, which established important pleading standards in ESOP cases.
- Obtained a groundbreaking order that ESOP-owned company's indemnification of ESOP trustee violated ERISA in *McMaken v. Chemonics*.

ESOPs

- Won a \$30 million trial judgment in *Brundle v. Wilmington Trust*, a case involving multiple breaches of duty by the trustee and complex valuation issues in an ESOP transaction; won a complete affirmance by the US Court of Appeals for the Fourth Circuit, establishing new law on ESOPs that has been cited nationwide.
- Settled an ESOP lawsuit for \$19.5 million, in *Jessop v. Larsen*, working closely with the US Department of Labor; yielded an average class member recovery of over \$30,000
- Recovered \$19.5 million for ESOP participants just before trial. *Choate v. Wilmington Trust*
- Recovered \$12 million for ESOP participants after one-week trial. *Nistra v. Reliance Trust*
- Recovered \$6.25 million for ESOP participants. *Casey v. Reliance Trust*
- Recovered \$5 million for ESOP participants even though plaintiffs had signed releases. *Fiorito v. Wilmington Trust*

401(k) Plans

- Recovered \$17 million for plan participants from Neuberger Berman in case alleging imprudent investment in proprietary fund. *Bekker v. Neuberger*

BAILEY GLASSER

- Settled a lawsuit against Franklin Templeton for \$26 million where the plaintiffs alleged that Franklin Templeton stuffed its own employee 401(k) plan with Franklin Templeton mutual funds despite a conflict of interest. *Cryer v. Franklin*
- Settled a lawsuit against Fidelity Investments for \$12 million where the plaintiffs alleged that Fidelity stuffed its own employee 401(k) plan with Fidelity mutual funds. *Bilewicz v. Fidelity*

Multi-Trust Financial Class Actions

- Settled a complex securities lending action for \$36 million against Northern Trust on behalf of hundreds of retirement plans across the country. *Diebold v. Northern Trust*
- Obtained class certification of hundreds of retirement plans in complex securities lending that settled for \$10 million. *Glass Dimensions v. State Street*
- Settled a multi-state class action against BNY Mellon for \$10 million on behalf of hundreds of private family trusts who had been charged hidden fees. *Henderson v. BNY Mellon*
- Prosecuting multi-plan class action alleging imprudent investments in hedge funds and private equity that cost plans billions of dollars. Won groundbreaking case in Supreme Court that allowed case to proceed. *Sulyma v. Intel Corp.*

BAILEY GLASSER **LLP**



Partner
Gregory Y. Porter

Washington, DC
1055 Thomas Jefferson Street NW
Suite 540
Washington, DC 20007
T: 202.548.7790 F: 202.463.2103
gporter@baileyglasser.com

“This is a wonderful result for your clients and for everyone, and I appreciate it. It is really wonderful when a judge has such fine lawyers in front of her. Throughout this case ...the quality of the work for all the parties has really been extraordinarily good...Congratulations to all of you for the fine work.”

Diebold v. Northern Trust Investments (recovered \$36 million)

Greg Porter has extensive trial and class action experience in complex pension, 401(k) plan, and employee stock ownership plan (ESOPs) lawsuits in federal court. Greg has led the firm’s ERISA and trust practice to major trial and appellate victories, including seminal decisions in the Seventh and Fourth Circuit Courts of Appeal and a \$30 million trial judgment that broke new ground for ESOPs. With co-counsel, the firm’s ERISA practice won a 9-0 decision in the Supreme Court, Intel Corp v. Sulyma, that established key statute of limitations rights for employees in ERISA cases.

Greg has recovered hundreds of millions of dollars on behalf of employees who lost retirement savings in 401(k) plans and ESOPs. He understands complex financial transactions, investments, and instruments.

Greg has also developed techniques for successfully investigating and prosecuting complex lawsuits involving business valuation, securities lending, hedge funds, and private equity. He is a skilled appellate advocate who has argued appeals in the Second, Fourth, Sixth and Eighth US Circuit Courts of Appeal.

Government Service / Previous Employment

United States Army, Infantry Branch

Executive Director, National Organization for the Reform of Marijuana Laws (NORML)

BAILEY GLASSER

Practice Areas

Appellate and Supreme Court Practice
Business Valuation
Cannabis Law
Class Actions
Commercial Litigation
COVID-19 Long-Term Disability
ERISA, Employee Benefits & Trust Litigation
Labor & Employment

Education

J.D., University of Southern California Gould *School of Law*, 1996, Order of the Coif, Articles Editor, *Southern California Law Review*, Paralyzed Veterans of America Scholarship - Teaching and Research Assistant
B.A., University of Massachusetts Amherst, 1989, Winning History Department Essay (1988)

Admissions

District of Columbia
New York
Virginia
US Supreme Court
US Court of Appeals for the First Circuit
US Court of Appeals for the Second Circuit
US Court of Appeals for the Third Circuit
US Court of Appeals for the Fourth Circuit
US Court of Appeals for the Fifth Circuit
US Court of Appeals for the Sixth Circuit
US Court of Appeals for the Seventh Circuit
US Court of Appeals for the Eighth Circuit
US Court of Appeals for the Ninth Circuit
US District Court, District of Columbia
US District Court, Central District of Illinois
US District Court, Northern District of Ohio
US District Court, Eastern District of Virginia

BAILEY GLASSER

Representative Matters

- Won a \$30 million trial judgment in *Brundle v. Wilmington Trust*, a case involving multiple breaches of duty by the trustee and complex valuation issues in an ESOP transaction; won a complete affirmance by the US Court of Appeals for the Fourth Circuit, establishing new law on ESOPs that has been cited nationwide
- Represented Intel employees in *Sulyma v. Intel Corp*, a case claiming that retirement plan trustees lost substantial retirement savings by investing in hedge funds and private equity. In February 2020, the Supreme Court issued a unanimous decision in favor of our clients, the employees, on a key statute of limitations defense
- Obtained a precedent-setting decision by the US Court of Appeals for the Seventh Circuit in *Allen v. GreatBanc Trust Co.*, which established important pleading standards in ESOP cases
- Settled an ESOP lawsuit for \$19.5 million, in *Jessop v. Larsen*, working closely with the US Department of Labor; yielded an average class member recovery of over \$30,000
- Settled a complex securities lending action for \$36 million against Northern Trust on behalf of hundreds of retirement plans across the country
- Settled a lawsuit against Franklin Templeton for \$26 million where the plaintiffs alleged that Franklin Templeton stuffed its own employee 401(k) plan with Franklin Templeton mutual funds despite a conflict of interest
- Settled a lawsuit against Neuberger Berman for \$17 million where the plaintiffs alleged that Neuberger pushed a low-performing and expensive proprietary mutual fund on its own employee 401(k) plan despite a conflict of interest
- Represents employees in multiple pension plan lawsuits claiming that employers used outdated mortality tables, some 50 years old, to improperly calculate pension benefits
- Represents employees in multiple ESOP lawsuits claiming that trustees caused employees to pay more than fair market value for employer stock
- Won a trial on behalf of the defendant in *Dupree v. Prudential Insurance Company*, where the plaintiffs alleged hundreds of millions of dollars in pension losses

Community and Professional Activities

Employee Benefits Committee, American Bar Association's Labor and Employment Section, Member

BAILEY GLASSER **LLP**

Awards & Accolades



Gregory Porter

Chambers USA, District of Columbia; ERISA Litigation: Mainly Plaintiffs (2022)

BAILEY GLASSER **LLP**



Partner

Mark G. Boyko

Missouri
34 N. Gore Ave
Suite 102
Webster Groves, MO 63119
T: 314.863.5446 F: 304.342.1110
mboyko@baileyglasser.com

Mark Boyko practices primarily in the area of complex fiduciary breach and prohibited transaction litigation, representing clients in actions brought under the Employee Retirement Income Security Act of 1974 (ERISA). He has secured judgments and settlements in this area exceeding \$500 million and handled successful appeals in federal circuit courts as well as the US Supreme Court.

Mark is a pioneer in ERISA class action litigation, representing workers and retirees in many of the earliest cases in his field. In these matters, Mark represents 401(k) plan participants alleging breach of fiduciary duties in order to hold employers and Wall Street accountable for the plans' investments and fees.

His practice also includes numerous private company ESOP cases in which he represents workers claiming that fiduciary trustees caused their employee stock ownership plans (ESOPs) to overpay corporate insiders for private company stock. Additionally, Mark represents pension plan participants in cases alleging that plans using decades-old mortality tables have unfairly reduced monthly benefits for married retirees.

Mark also handles matters related to the denial of long-term disability benefits for people impacted by COVID-19, including individuals who are immunocompromised or have other issues that impact their ability to be in-person at workplaces, or who have long-haul COVID.

Mark's practice additionally includes providing legal and strategic services to founders, startups, and small businesses from pre-conception through Series-A funding.

Awards & Accolades

Super Lawyers, Missouri, "Rising Star," Class Action/Mass Torts, Employee Benefits, Business/Corporate, Personal Injury - General (2020)

BAILEY GLASSER

Practice Areas

Appellate and Supreme Court Practice
Arbitration & Dispute Resolution
Business & Finance
COVID-19 Long-Term Disability
ERISA, Employee Benefits & Trust Litigation
Life Sciences
Private & Family Businesses

Education

LL.M., New York University School of Law, 2005
J.D., University of Missouri - School of Law, 2004
B.A., University of Illinois at Urbana–Champaign, 2001

Admissions

Missouri
Illinois
New York

Representative Matters

- Representing surgeon in federal case against Unum related to COVID-19 and the denial of long-term disability benefits under an ERISA long-term disability plan.
- Represents employees and 401(k) plan participants in litigation alleging employers used their own expensive proprietary investment products in the plans because of the benefit to the employer
- Represents retirees and defined benefit pension plan participants in litigation against employers such as American Airlines and Anheuser Busch concerning the actuarial calculations the plans use to calculate pension benefits
- Represents current and former employees in litigation alleging that the purchase or sale of privately held stock by an Employee Stock Ownership Plan (ESOP) was not at market prices and instead done to benefit the corporate founders or insiders
- Represents workers and retirees alleging their employer imprudently concentrated their 401(k) plan investments in single stocks or a small number of stocks
- Represents Embark Veterinary, Inc., a canine genetic testing company, on corporate matters from company origin

BAILEY GLASSER

- Represents startups in diverse fields including medical monitoring and YouTube/entertainment

Community and Professional Activities

Director, Kirkwood R-VII School District

St. Louis County Economic Rescue Team

Board Member, Places for People (2009-2021)

Vice-Chair, Employee Benefits General Committee, American Bar Association's Torts, Trial, and Insurance Practice Section (2020-21)

Former professional soccer referee

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

CHRISTOPHER SNIDER, on behalf of the)
Seventy Seven Energy Inc. Retirement &)
Savings Plan and a class of similarly)
situated participants of the Plan,)

Plaintiff,)

v.)

Case No. CIV-20-977-D

ADMINISTRATIVE COMMITTEE,)
SEVENTY SEVEN ENERGY INC.)
RETIREMENT & SAVINGS PLAN; et al.)

Defendants.)

DECLARATION OF JAMES L. COLVIN, III

I, James L. Colvin, III, declare as follows.

1. I make this Declaration of my own personal knowledge, and if called as a witness, I would and could testify competently to the matters stated herein.

2. I am a partner at the law firm Latham, Steele, Lehman, Keele, Ratcliff, Freije & Carter, PC (“LSL”), local co-counsel for Plaintiff Christopher Snider in this litigation.

3. I submit this declaration in support of Plaintiff’s Unopposed Motion for Final Approval of Class Settlement and Certification of a Class for Settlement Purposes and Plaintiff’s Motion for an Award of Attorneys’ Fees and Reimbursement of Expenses.

WORK PERFORMED BY LSL

4. LSL performed substantial work in this case. I and other attorneys at LSL assisted in the preparation, coordination, and filing of pleadings, including multiple *pro hac vice* motions for the admittance of national counsel. LSL also attended hearings and

court conferences as necessary in the prosecution of this case. In addition, LSL facilitated compliance with local rules for the preparation of pleadings as well as coordination of counsel for communication. LSL continually monitored this matter throughout the litigation process.

5. Based on the amount of work we performed, as of the time of settlement, we had a thorough understanding of the legal and factual issues in the case.

INFORMATION CONCERNING LSL'S LODESTAR AND EXPENSES

6. In preparation for filing the Motion for Fees, I reviewed LSL's time and out-of-pocket expenses in connection with this litigation.¹

7. The information in this declaration regarding my firm's time and expenses is taken from contemporaneous time and expense printouts prepared and maintained by my firm in the ordinary course of business. The time reflected in my firm's lodestar calculation and the expenses for which payment is sought are reasonable and were necessary for the effective and efficient prosecution and resolution of the litigation. In addition, the expenses are all of the type that would normally be charged to a fee-paying client in the private marketplace. LSL prosecuted this case on a wholly contingent basis and has not received any compensation to date for either its litigation expenses or its time. Class Counsel estimates that they will need to spend additional hours to see this action through to its final conclusion, including responding to any objections to the Settlement, preparing for and

¹ Time and Expenses for work in the *Myers* case which is applicable to and benefitted the class this case and has not been compensated is included.

attending the Final Approval Hearing, and responding to Class Members' questions about the Settlement.

8. A summary of LSL's hours and lodestar in the case as of May 31, 2022, is shown in the following table:

| Name | Position | Hours | Hourly Rate | Lodestar | Rate under Kelly and Cates | Lodestar under Kelly and Cates |
|------------------|-----------------|--------------|--------------------|-----------------|-----------------------------------|---------------------------------------|
| Bob Latham | Partner | 17.3 | \$350 | \$6,055 | \$1,060 | \$18,338 |
| James Colvin | Partner | 61.7 | \$300 | \$18,510 | \$900 | \$55,530 |
| Ashley Bibb | Partner | 1.3 | \$300 | \$390 | \$900 | \$1,170 |
| Sharon Halowell | Paralegal | 44.6 | \$200 | \$8,920 | \$330 | \$14,718 |
| Elizabeth Martin | Paralegal | 1.3 | \$200 | \$260 | \$330 | \$429 |
| Total | | 126.2 | | \$34,135 | | \$90,185 |

9. The hourly rates shown in the chart are LSL's normal hourly rates. LSL's rates are consistent with local hourly rates of comparably skilled and experienced attorneys.

INFORMATION CONCERNING LSL's EXPENSES

10. Class Counsel incurred \$1,037.26 in out-of-pocket expenses to prosecute this case. As shown in the chart below and in prior filings, the expenses incurred were both reasonable and necessary to prosecute this action.

| Expense Category | Amount |
|--|-------------------|
| Fees, Filing, Service of Process, Pro Hac Vice | \$855.60 |
| Outside Delivery Services (FEDEX, etc.) | \$42.70 |
| Travel | \$138.96 |
| Total | \$1,037.26 |

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

Executed, this 30th day of June 2022.

/s/James L. Colvin, III
James L. Colvin, III

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

CHRISTOPHER SNIDER, on behalf of the)
Seventy Seven Energy Inc. Retirement &)
Savings Plan and a class of similarly)
situated participants of the Plan,)

Plaintiff,)

v.)

Case No. CIV-20-977-D

ADMINISTRATIVE COMMITTEE,)
SEVENTY SEVEN ENERGY INC.)
RETIREMENT & SAVINGS PLAN; et al.)

Defendants.)

DECLARATION OF ROBERT A. IZARD

I, Robert A. Izard, declare as follows.

1. I make this Declaration of my own personal knowledge, and if called as a witness, I would and could testify competently to the matters stated herein.

2. I am a partner at the law firm Izard Kindall & Raabe LLP (“IKR”), co-counsel for Plaintiff Christopher Snider in this litigation.

3. I submit this declaration along with the attached exhibit described below in support of Plaintiff’s Unopposed Motion for Final Approval of Class Settlement and Certification of a Class for Settlement Purposes and Plaintiff’s Motion for an Award of Attorneys’ Fees and Reimbursement of Expenses.

WORK PERFORMED BY IKR

4. IKR performed substantial work in this case. I and other attorneys at IKR performed a legal and factual investigation prior to filing the case. We reviewed Plan related documents, including filings with the Department of Labor, and documents related to Chesapeake's spin-off of Seventy Seven Energy, including each company's filings with the SEC. We also performed substantial legal research related to the facts we uncovered in our investigation, including cases concerning ERISA's fiduciary duties, Department of Labor regulations and IRS opinion letters. Based on this work, we drafted the initial complaint. We reviewed and responded to a motion to dismiss. We negotiated a Rule 26 (f) report and participated in a Rule 16 conference. We negotiated a Protective Order. We engaged in substantial discovery, including (1) written discovery, including preparing discovery requests, meeting and conferring with Defendants and reviewing responses and documents produced; (2) fact depositions; and (3) expert discovery, including preparing expert reports, responding to Defendants' expert reports and participating in expert document and deposition discovery. We engaged in substantial motion practice regarding the complaint, discovery issues and class certification. We participated in a mediation and prepared a mediation statement with supporting materials prior thereto. Finally, we negotiated a settlement agreement and prepared all papers necessary for preliminary and final approval.

5. Based on the amount of work we performed, as of the time of settlement, we had a thorough understanding of the legal and factual issues in the case.

INFORMATION CONCERNING IKR'S LODESTAR AND EXPENSES

6. In preparation for filing the Motion for Fees, I reviewed IKR's time and out-of-pocket expenses in connection with this litigation.¹

7. The information in this declaration regarding my firm's time and expenses is taken from contemporaneous time and expense printouts prepared and maintained by my firm in the ordinary course of business. The time reflected in my firm's lodestar calculation and the expenses for which payment is sought are reasonable and were necessary for the effective and efficient prosecution and resolution of the litigation. In addition, the expenses are all of the type that would normally be charged to a fee-paying client in the private marketplace. IKR prosecuted this case on a wholly contingent basis and has not received any compensation to date for either its litigation expenses or its time. Class Counsel estimates that they will need to spend additional hours to see this action through to its final conclusion, including responding to any objections to the Settlement, preparing for and attending the Final Approval Hearing, and responding to Class Members' questions about the Settlement.

8. A summary of IKR's hours and lodestar in the case as of July 1, 2022, is shown in the following table:²

¹ Time and Expenses for work in the *Myers* case which is applicable to and benefitted the class this case and has not been compensated is included.

² Biographical details for IKR and the IKR attorneys who worked on the case are included at the end of the firm's resume, attached hereto as Exhibit 1.

| Name | Position | Hours | Hourly Rate | Lodestar | Rate under Kelly and Cates | Lodestar under Kelly and Cates |
|-----------------|-----------------|---------------|--------------------|---------------------|-----------------------------------|---------------------------------------|
| Robert Izard | Partner | 177.00 | \$925 | \$163,725.00 | \$1,060 | \$187,620.00 |
| Mark Kindall | Partner | 146.50 | \$850 | \$124,525.00 | \$1,060 | \$155,290.00 |
| Craig Raabe | Partner | 8.00 | \$850 | \$6,800.00 | \$1,060 | \$8,480.00 |
| Douglas Needham | Partner | 390.00 | \$650 | \$253,500.00 | \$650 | \$253,500.00 |
| Oren Faircloth | Associate | 43.00 | \$350 | \$15,050.00 | \$490 | \$21,070.00 |
| Jude Reid | Paralegal | 4.25 | \$180 | \$765.00 | \$330 | \$1,402.50 |
| Total | | 768.75 | | \$564,365.00 | | \$627,362.50 |

9. The hourly rates shown in the chart are IKR's normal rates for both hourly customers and class action work (although hourly clients can receive a discount for prompt payment). IKR's class action work is specialized national practice; we do not charge differential rates based on the location where a lawsuit is filed. Courts have approved IKR's fees in class actions litigated all over the country.

10. In the course of our nationwide practice, attorneys at IKR have worked with many of the firms that typically represent plaintiffs in ERISA class actions nationwide. As a result, we are familiar with the rates charged by other firms in our practice area. In our experience, our rates are broadly in line with the rates of other firms with nationwide ERISA class action practices and have been the basis for awards of fees in courts around the country.

INFORMATION CONCERNING IKR's EXPENSES

11. IKR incurred \$1,649.63 in out-of-pocket expenses to prosecute this case. As shown in the chart below and in prior filings, the expenses incurred were both reasonable and necessary to prosecute this action.

| IKR EXPENSES | |
|-----------------------------|-------------------|
| Pacer Research | \$64.90 |
| Travel – Rule 16 Conference | \$1,584.73 |
| Total | \$1,649.63 |

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

Executed at West Hartford, Connecticut, this 1st day of July, 2022.

/s/Robert A. Izard
Robert A. Izard

EXHIBIT 1



FIRM RESUME

Izard, Kindall & Raabe LLP (“IKR”)¹ is one of the premier national firms engaged in class action litigation under the Employee Retirement Income Security Act of 1974 (ERISA) and the securities laws. We have served as lead or co-lead counsel in many large ERISA class actions, including cases against Raytheon, Wells Fargo, JP Morgan, Metropolitan Life, United Healthcare, Cigna, Merck, Time Warner, AT&T, Fidelity, Prudential and John Hancock as well as over 30 securities class actions, including cases involving shares of Campbell Soup Company, Citizens Utilities Company, Newmont Mining Corporation, SS&C Technologies, Inc., SureBeam Corporation, and Veritas Corporation.

ERISA Cases where IKR has been formally appointed as sole or co-lead counsel, or serves as lead or co-lead counsel, include:

- *Overby v. Tyco Int’l, Ltd.*, No. 02-CV-1357-B (D.N.H.);
- *In re Reliant Energy ERISA Litig.*, No. H-02-2051 (S.D. Tex.);
- *In re AOL Time Warner, Inc. Sec. and ERISA Litig.*, MDL Docket No. 1500 (S.D.N.Y.);
- *Furstenau v. AT&T*, Case No. 02 CV 8853 (D.N.J.);
- *In re AEP ERISA Litig.*, Case No. C2-03-67 (S.D. Ohio);

¹ Formerly known as Izard Nobel LLP (2008-2016), Schatz Nobel Izard, P.C. (2006-2008), and Schatz & Nobel, P.C. (1995-2006).

- *In re JDS Uniphase Corp. ERISA Litig.*, Civil Action No. 03-4743-CW (N.D. Cal.);
- *In re Sprint Corporation ERISA Litig.*, Master File No. 2:03-CV-02202-JWL (D. Kan.);
- *In re Cardinal Health, Inc. ERISA Litig.*, Case No. C 2-04-642 (S.D. Ohio);
- *Spear v. Hartford Fin. Svcs Group. Inc.*, No. 04-1790 (D. Conn.);
- *In re Merck & Co., Inc. Sec., Derivative and ERISA Litig.*, MDL No. 1658 (D.N.J.);
- *In re Diebold ERISA Litig.* No. 5:06-CV- 0170 (N.D. Ohio);
- *In re Bausch & Lomb, Inc. ERISA Litig.*, Master File No. 06-CV-6297-MAT-MWP (W.D.N.Y.);
- *In re Hartford Fin. Svcs Group. Inc. ERISA Litig.*, No. 08-1708 (D. Conn.);
- *In re Merck & Co., Inc. Vytorin ERISA Litig.*, MDL No. 1938, 05-CV-1974 (D.N.J.);
- *Mayer v. Admin. Comm. of Smurfit Stone Container Corp.*, 09-CV-2984 (N.D. IL.);
- *In re YRC Worldwide ERISA Litig.*, Case No. 09-CV-02593 (D. Kan);
- *Board of Trustees v. JP Morgan Chase Bank*, Case No. 09-cv-9333 (S.D.N.Y.);
- *White v. Marshall & Ilsley Corp.*, No. 10-CV-00311 (E.D. Wis.);
- *Griffin v. Flagstar Bancorp, Inc.*, No. 2:10-CV-10610 (E.D. Mich.);
- *In re Eastman Kodak ERISA Litig.*, Master File No. 6:12-cv-06051-DGL (W.D.N.Y.);
- *Kemp-DeLisser v. Saint Francis Hospital and Medical Center*, Civil Action No. 3:15-cv-01113-VAB (D. Conn.);
- *Tucker v. Baptist Health System, Inc.*, Case No. 2:15-cv-00382-SLB (N.D.AL.);
- *Cryer v. Franklin Resources, Inc.*, No. 4:16-cv-04265 (N.D. Cal.);
- *Bishop-Bristol v. Massachusetts Mutual Life Insurance Company*, No. 3:16-cv-30082-MGM (D. Mass.);
- *Matthews v. Reliance Trust Company*, No. 1:16-cv-04773 (N.D. Ill.);
- *Brace v. Methodist Le Bonheur Healthcare*, No. 16-cv-2412-SHL-tmp (W.D. Tenn.);
- *Nicholson v. Franciscan Missionaries of our Lady Health Systems*, No. 16-CV-258-SDD-EWD (M.D. LA);

- *In re Mercy Health ERISA Litig.*, No. a:16-cv-441 (S.D. Ohio);
- *Negron v. Cigna Corp.*, No. 3:16-cv-01702 (D. Conn.);
- *Schultz v. Edward D. Jones & Co.*, No. 4:16-cv-01346 (E.D. Mo.);
- *Larson v. Allina Health Syst.*, No. 0:17-cv-03835 (D. Minn.);
- *Johnson v. Providence Health & Services*, No. 2:17-cv-01779 (W.D. Wash.);
- *Berry v. Wells Fargo & Co.*, No. 3:17-304 (D.S.C.);
- *Neufeld v. Cigna Health & Life Ins.*, No. 3:17-cv-01693 (D. Conn.);
- *Myers v. 401(k) Fiduciary Comm. for Seventy Seven Energy*, No. 5:17-cv-00200 (D. Okl.);
- *Quatrone v. Gannett Co., Inc.*, No. 1:18-cv-00325 (E.D. Va);
- *Reidt v. Frontier Communications Corp.*, No. 3:18-cv-01538 (D. Conn.);
- *Sohmer v. UnitedHealth Group, Inc.*, No. 0:18-cv-03191 (D. Minn.);
- *Masten v. Metropolitan Life Ins. Co.*, No. 1:18-cv-11229 (S.D.N.Y.)
- *Smith v. U.S. Bancorp*, No. 0:18-cv-03405 (D. Minn.);
- *Mannino v. Louisiana Health Serv. & Indemnity Co.*, No. 3:19-cv-00185 (M.D. La.);
- *Herndon v. Huntington-Ingalls Industries, Inc.*, No. 4:19-cv-00052 (E.D. Va.);
- *Belknap v. Partners Healthcare System, Inc.*, No. 1:19-cv-11437 (D. Mass.);
- *Cruz v. Raytheon Co.*, No. 1:19-cv-11425 (D. Mass.);
- *Smith v. Rockwell Automation Inc.*, No. 2:19-cv-00505 (E.D. Wisc.);
- *Brown v. United Parcel Service, Inc.*, No. 1:20-cv-00460-MLB (N.D. GA);
- *Berube v. Rockwell Automation Inc.*, No. 2:20-cv-01783 (E.D. Wisc.); and
- *Shafer v. Morgan Stanley*, 1:20-cv-11047 (S.D.N.Y.);

Moreover, IKR was also appointed to the Steering Committee in *Tittle v. Enron Corp.*, No. H-01-3913 (S.D. Tex.); *In re Electronic Data Systems ERISA Litig.*, 3:02-CV-1323 (E.D. Tex.); and *In re Marsh ERISA Litig.*, Master File No. 04 CV 8157 (S.D.N.Y.).

Our notable successes include settlements against the Franciscan Missionaries of Our Lady Health System (\$125 million), Saint Francis Hospital and Medical Center (\$107 million); AOL Time Warner (\$100 million); Wells Fargo (\$79 million); Tyco International (\$70.5 million); Merck (\$49.5 million); Cardinal Health (\$40 million); and AT&T (\$29 million). Moreover, IKR was on the Executive Committee in *In re Enron Corporation Securities and ERISA Litig.*, No. 02-13624 (S.D. Tex.), which resulted in a recovery in excess of \$250 million.

Numerous courts have recognized IKR's superior expertise in ERISA actions of this type. In particular, in *In re Merck Sec., ERISA and Deriv. Litig.*, the court stated, "[w]hat is clear is that Schatz & Nobel [now IKR] does have substantial experience in this area and much more experience than other contenders." *In re Merck Sec., ERISA and Deriv. Litig.*, No. 05 1157, (D.N.J.) (Transcript of proceedings on Apr. 18, 2005). Similarly, the court in *In re Tyco International, Ltd., Securities Litig.* found that IKR and its co-counsel "have the necessary resources, skill and commitment to effectively represent the proposed class" and "extensive experience in both leading class actions and prosecuting ERISA claims." *In re Tyco International, Ltd. Sec. Litig.*, Case No. 02 1335, slip op. at 2 (D.N.H. Dec. 18, 2002). In *Cardinal Health*, the court also noted IKR's "extensive experience in ERISA litigation," the "high level of ERISA expertise" and "several well-argued briefs . . . on a range of issues." *In re Cardinal Health, Inc. ERISA Litig.*, 225 F.R.D.552, 555-556 (S.D. Ohio Jan. 14, 2005). In *Berry v. Wells Fargo*, the court found that IKR and its co-counsel "displayed extraordinary skill and determination throughout this litigation which fully supports their well-known reputation and clear ability to handle a case of this magnitude." Slip. Op., No. 3:17-cv-00304, Dkt. No. 175, at 25 (D.S.C. July 29, 2020).

Courts have recognized the superior results that IKR has obtained as a result of its experience. In approving the *Sprint ERISA Litig.* settlement, the court found, “[t]he high quality of [IKR’s] work culminated in the successful resolution of this complex case” and that “the results obtained by virtue of the settlement are extraordinary. . . .” *In re Sprint Corp. ERISA Litig.*, No. 03 2202, slip op. at 33, 35 (D. Kan. Aug. 3, 2006). The District Court’s decision approving the settlement negotiated by IKR in the *St. Francis* litigation similarly found the result to be “an extremely favorable one for the class,” noting that the recovery achieved by the settlement represented over 76 percent of the amount by which the retirement plan was alleged to be underfunded. *Kemp-DeLisser v. Saint Francis Hosp. & Med. Ctr.*, No. 15-CV-1113 (VAB), 2016 WL 6542707, at *10 (D. Conn. Nov. 3, 2016). The Court also noted that IKR’s time and efforts “resulted in an extremely efficient and favorable resolution of the case.” *Id.* at *5. Similarly, in *Edwards v. North American Power & Gas, LLC*, No. 3:14-cv-1714 (D. Conn.), the Court observed that IKR is one of the “national leaders in class action litigation” and achieved a “significant settlement for a large class of individuals,” while the *Wells Fargo* court noted that the settlement in that case “is the largest recovery in a ‘top hat’ case in the history of ERISA.” Slip. Op., No. 3:17-cv-00304, Dkt. No. 175, at 25 (D.S.C. July 29, 2020).

In the AOL Time Warner ERISA case, the Independent Fiduciary retained to review the \$100 million settlement on behalf of the AOL Time Warner retirement plans expected the case to settle for only \$70 million. *In re AOL Time Warner, Inc. Sec. and ERISA Litig.*, No. 02-CV-1500 (S.D.N.Y), Report & Recommendation of Special Master dated August 7, 2007 at 7, approved by the Court by Memorandum Opinion dated October 26, 2007. The Special Master reviewing an application for attorneys’ fees found that in addition to the fact that the quality of counsel’s

work was “impressive,” “[e]ven more importantly, they used the mediation process to persuade reluctant and determined defendants to part with settlement dollars well above those expected.” *Id.* at 30. According to the Special Master, obtaining an additional \$30 million for the class stands out as “some of the hardest work and most outstanding results” obtained by IKR and its co-counsel. *Id.* at 37. In negotiating this extraordinary settlement, IKR “stretched the defendants’ settlement tolerances beyond their limits.” *Id.* Moreover, the Court found that IKR worked with great efficiency. After conducting a “moderately detailed examination of counsels’ actual time records,” the Special Master lauded the efficiency with which counsel litigated such a large case which inherently tends to produce inefficiencies. *Id.* at 26, 43.

In approving the \$49.5 million settlement in *In re Merck & Co., Inc. Securities, Derivative & ERISA Litig.*, in which IKR served as Chair of the Lead Counsel Committee, the Court stated that it was an “extremely successful and extremely appropriate and reasonable settlement.” *In re Merck & Co., Inc. Securities, Derivative & ERISA Litig.*, No. 05-2369, (D.N.J.) (Transcript of proceedings on Nov. 29, 2011 at 15).

In the *Tyco ERISA* case, the court stated that the \$70.525 million settlement in an “extraordinarily complex case factually” was “outstanding,” and “an extraordinary settlement given the circumstances of the case and the knowledge that [the Court] has about the risks that the plaintiff class faced in pursuing this matter to verdict.” *In re Tyco International, Ltd., Securities Litig.*, No. 02-1335-B, (D. N.H.) (Transcript of proceedings on Nov. 18, 2009 at 11, 31, 41, 61).

Similarly, in the *Flagstar* case, Court found that the settlement that represented 85% of likely recoverable damages was an “excellent result” as a result of the unquestionable “skill and

expertise of [IKR and its co-counsel] who are nationally known for their successful representation of ERISA clients in class action matters.” *Griffin v. Flagstar Bancorp, Inc.*, No. 2:10-CV-10610 (E.D. Mich.) (Order and Opinion dated Dec. 12, 2013 at 8, 15-16.)

IKR’s ERISA team is led by Robert A. Izard. In approving the *Tyco* settlement, Judge Paul Barbadoro, Chief Judge of the District of New Hampshire, stated with respect to Mr. Izard:

I have a high regard for you. I know you to be a highly experienced ERISA class action lawyer. You’ve represented your clients aggressively, appropriately and effectively in this litigation, and I have a high degree of confidence in you so I don’t think there’s any question that the quality of counsel here is a factor that favor’s the Court’s endorsement of the proposed settlement....

I have enjoyed working with you in this case. You’ve always been helpful. You’ve been a gentleman. You’ve been patient when I’ve been working on other matters....

In re Tyco International, Ltd., Securities Litig., No. 02-1335-B, (D. N.H.)(Transcript of proceedings on Nov. 18, 2009 at 74-75).

ATTORNEYS

Robert A. Izard heads the firm's ERISA team and has been lead or co-lead counsel in many of the nation's most significant ERISA class actions, including cases against Raytheon, Wells Fargo, JP Morgan, Metropolitan Life, United Healthcare, Cigna, Merck, Time Warner, AT&T, Fidelity, Prudential and John Hancock among others. Mr. Izard has substantial experience in other types of complex class action and commercial litigation matters. For example, he represented a class of milk purchasers in a price fixing case. He also represented a large gasoline terminal in a gasoline distribution monopolization lawsuit.

As part of his thirty-five plus years litigating complex commercial cases, Mr. Izard has substantial jury and nonjury trial experience, including a seven-month jury trial in federal district court. He is also experienced in various forms of alternative dispute resolution, including mediation and arbitration.

Mr. Izard is the author of *Lawyers and Lawsuits: A Guide to Litigation* published by Simon and Schuster and a contributing author to the *Mediation Practice Guide*. He is the former Chair of the Commercial and Business Litigation Committee of the Litigation Section of the American Bar Association. He is listed in *Best Lawyers* in the areas of ERISA and antitrust litigation. He is listed in *Super Lawyers* in the areas of class action and business litigation.

Mr. Izard received his B.A. from Yale University and his J.D., with honors, from Emory University, where he was elected to the Order of the Coif and was an editor of the *Emory Law Journal*.

Mark P. Kindall During his 16 years with IKR, Mark P. Kindall has represented clients in many significant class action cases, including ERISA litigation against AOL Time Warner, Kodak,

Cardinal Health, Gannett and Raytheon, consumer fraud cases against Johnson & Johnson, Unilever and Neutrogena, securities fraud litigation against SupportSoft, American Capital and Nuvelo, and bank overdraft fee litigation against Webster Bank and People's United Bank. Mr. Kindall successfully argued *Berson v. Applied Signal Tech. Inc.*, 527 F.3d 982 (9th Cir. 2008), and *Balser v. The Hain Celestial Group*, No. 14-55074, 2016 WL 696507 (9th Cir. 2016), which clarified standards for victims of securities and consumer fraud, respectively, as well as *Langan v. Johnson & Johnson Consumer Cos., Inc.*, 897 F.3d 88 (2d Cir. 2018), which held that plaintiffs bringing claims under state law could represent a class that included people in states with similar laws. Mr. Kindall also wrote Plaintiff's brief in *Stegemann v. Gannett Co., Inc.*, 970 F.3d 465 (4th Cir. 2020), which held that plaintiff stated a plausible claim for breach of fiduciary duty for failure to divest from a single-stock fund in a 401(k) plan.

Mr. Kindall was a lawyer at Covington & Burling in Washington, D.C. from 1988 until 1990. In 1990 he joined the United States Environmental Protection Agency as an Attorney Advisor. He represented the U.S. government in international negotiations at the United Nations, the Organization for Economic Cooperation and Development and the predecessor of the World Trade Organization, and was a member of the U.S. Delegation to the United Nations Conference on Environment and Development (the "Earth Summit") in Rio de Janeiro in 1992. From 1994 until 2005, Mr. Kindall was an Assistant Attorney General for the State of Connecticut, serving as lead counsel in numerous cases in federal and state court and arguing appeals before the Connecticut Supreme Court and the United States Court of Appeals for the Second Circuit.

Mr. Kindall has taught courses in appellate advocacy, administrative law and international environmental law at the University of Connecticut School of Law. He is admitted to practice in Connecticut, California, and the District of Columbia. He is also a member of the bar of the United States Supreme Court, the U.S. Courts of Appeals for the Second, Fourth, Fifth, Ninth, and D.C. Circuits, and the United States District Courts for Connecticut, the District of Columbia, the Eastern District of Wisconsin, the Central District of Illinois, and all U.S. District Courts in New York and California.

Mr. Kindall is a 1988 graduate of the University of California at Berkeley Law School, where he served as Book Review Editor of the California Law Review and was elected to the Order of the Coif. He has a bachelor's degree in history with highest honors from the University of California at Riverside, and he also studied history at the University of St. Andrews in Scotland.

Craig A. Raabe joined the partnership in 2016 from a large, regional law firm, where he previously served as the chair of the litigation department. Mr. Raabe has a nationwide practice and he has tried many complex civil and criminal cases. He is a Fellow in the American College of Trial Lawyers. He has been listed in The Best Lawyers in America© since 2006 (Copyright by Woodward/White, Inc., Aiken, SC), most recently in six disciplines: Bet-the-Company Litigation, Commercial Litigation, Antitrust, Regulatory/Environmental Litigation, White-Collar Criminal Defense and General Criminal Defense. The Best Lawyers in America© also has named Mr. Raabe as the regional "Lawyer of the Year" in the areas of Bet-the-Company Litigation, Antitrust (3 times), White-Collar Criminal Defense and Intellectual Property. Chambers and Partners© has named Mr. Raabe to its highest level of recognition, Band 1, in the area of General

Commercial Litigation and White-Collar Crime and Government Investigations. In addition, he has been listed multiple times as one of the Top 50 Lawyers in Connecticut by Super Lawyers[®] 2020 (Super Lawyers is a registered trademark of Key Professional Media, Inc.).

Mr. Raabe's commercial trial experience is broad and includes areas such as antitrust, government contracting, fraud, intellectual property, and unfair trade practices. Mr. Raabe has prosecuted, defended, and tried many class actions in areas including antitrust, fraud, unfair trade practices, securities, ERISA, and breach of contract. He also has tried many serious felony criminal cases in state and federal court and is active in the criminal defense trial bar. As part of his commitment to public service, Mr. Raabe has handled and tried significant court-appointed criminal matters, including death penalty litigation. Mr. Raabe also served as court-appointed trial counsel and exonerated a man who served 30 years in prison for a homicide with which he had no involvement. In addition to his trial practice, Mr. Raabe counsels clients on compliance issues and the resolution of regulatory enforcement actions by government agencies.

By appointment of the chief judge of the Second Circuit, Mr. Raabe has served on the Reappointment Committee for Connecticut's federal defender. The chief judge of the Connecticut district court appointed him to chair the United States Magistrate Reappointment Committee and to serve on the Merit Selection Panel for Magistrate Judges. By appointment of the district judges, he currently is serving on Connecticut's Criminal Justice Act Standing Committee. In 2012, the Connecticut district court judges selected Mr. Raabe for the district's Pro Bono Award for his service to indigent clients. He also serves as an officer of the Connecticut Bar Association's Federal Practice and Antitrust Sections.

Mr. Raabe is admitted to practice in the U.S. Supreme Court, the Courts of Appeals for the First, Second, and D.C. Circuits, the U.S. District Courts for Connecticut and the Eastern and Southern Districts of New York, the U.S. Tax Court and the state of Connecticut. He is an honors graduate of Valparaiso University and Western New England College of Law, where he served as Editor-in-Chief of the Law Review. Following graduation, Mr. Raabe served as the law clerk for the Honorable Arthur H. Healey of the Connecticut Supreme Court.

Mr. Raabe is a commercial, instrument-rated pilot and is active in general aviation. He serves as a volunteer pilot for Angel Flight Northeast, which provides free air transportation to people requiring serious medical care.

Seth R. Klein has been an attorney at Izard Kindall & Raabe LLP for nearly twenty years, focusing on both class action and complex civil litigation in areas including ERISA, consumer protection, securities and antitrust law.

In recent years Mr. Klein's class action work has resulted in significant class-wide recoveries. For example, in *Paetzold v. Metropolitan District Commission* (Conn. Super.), his team successfully recovered full damages against a quasi-public agency for wrongful excess billing of water customers. He also worked on the successful recovery of tens of millions of dollars for consumers wrongfully charged excessive electricity rates by several different third-party suppliers in *Richards v. Direct Energy Services LLC* (D. Conn.); *Edwards v. North American Power & Gas LLC* (D. Conn.); *Sanborn v. Viridian Energy, Inc.* (D. Conn.); *Chandler v. Discount Power* (Conn. Super.); *Gruber v. Starion Energy, Inc.* (Conn. Super.); and *Jurich v. Verde Energy USA, Inc.* (Conn. Super.).

In addition, Mr. Klein has worked on teams that have successfully represented high net worth individuals on complex civil matters as both plaintiff and defendant, including at trial.

Mr. Klein's current class cases include litigation against several of the largest United States real estate companies for the alleged charging of anticompetitive commissions (Nosalek v. MLS Property Information Network (D. Mass)) and several class actions against companies alleged to have overcharged patients for medical and prescription drug benefits (Negron v. Cigna Health and Life Insurance Company (D. Conn.); Neufeld v. Cigna Health and Life Insurance Company (D. Conn.); Bennett v. Blue Cross and Blue Shield of Louisiana (M.D. La.); Mohr-Lercara v. Oxford Health Ins., Inc. (S.D.N.Y.); and Sohmer v. UnitedHealth Group Inc. (D. Minn.)).

Mr. Klein also continues to represent individual clients in complex civil matters, including representation of an unjustly convicted former inmate to recover damages for the police misconduct that led to his wrongful imprisonment. He also is representing a regulated entity against the Connecticut Department of Banking in a variety of complex administrative and court proceedings.

Prior to joining Iazard Kindall and Raabe, Mr. Klein was associated with the reinsurance litigation group at Cadwalader, Wickersham & Taft LLP in New York, where he focused on complex business disputes routinely involving hundreds of millions of dollars. Before that, Mr. Klein served as an Assistant Attorney General for the State of Connecticut, where he specialized in consumer protection matters and was a founding member of the office's electronic commerce unit. Mr. Klein is a 1996 graduate of the University of Michigan law school and clerked for the Hon. David M. Borden of the Connecticut Supreme Court upon graduation.

Douglas P. Needham represents plaintiffs in class actions cases under ERISA and consumer protection statutes concerning pension calculations, fees and investments in 401(k) plans, and insurance rates and coverage. He has litigated class actions cases against some of America's largest companies about ERISA's vesting rules, 401(k) plan investments and how corporate transactions affect participants' benefits, and has obtained significant class-wide recoveries.

Mr. Needham works extensively with experts in the fields of actuarial science, finance and economics to apply the ERISA statute to novel issues and complex annuity and financial products. Since 2018, he has taken a leading role in developing and litigating cases around the country involving the payment of actuarially equivalent pension benefits under ERISA. These cases include *Cruz v. Raytheon*, a case in the District of Massachusetts that settled in 2021 by providing class members increased pension benefits valued at more than \$59 million, as well as *Herndon v. Huntington Ingalls Industries, Inc.* (E.D. Virginia), *Masten v. Metropolitan Life Insurance Company* (S.D. New York), *Berube v. Rockwell Automation, Inc.* (E.D. Wisconsin), and *Belknap v. Partners Healthcare System, Inc.* (D. Massachusetts).

In *Berry v. Wells Fargo*, 2020 WL 9311859 (D.S.C. July 29, 2020), Mr. Needham litigated whether a plan was improperly claiming "top hat" status under ERISA. In approving the \$79 million settlement, the court found it was "the largest recovery in a 'top hat' case in the history of ERISA" and was the result of "displayed extraordinary skill and determination." Mr. Needham is also co-counsel for the class in *Stegemann v. Gannett*, 970 F.3d 465 (4th Cir. 2020), a case about a single-stock fund in a 401(k) plan that clarified the pleading standards for claims

under ERISA's duties of prudence and diversification that Law360 called one of the "most significant" ERISA decisions of 2020.

Before joining Izard, Kindall & Raabe in 2016, Mr. Needham was a partner in a large national law firm, where he represented clients in cases involving business torts, claims for breach of fiduciary duty and fraud in Connecticut, New York, and Massachusetts.

Mr. Needham received his J.D. from Boston University School of Law in 2007 and his B.S. from Cornell University in 2004, where he received numerous academic honors, was a Cornell Tradition Fellow and an All-Ivy player on the men's lacrosse team. He is a board member for his town's lacrosse program, the risk manager for his town's soccer program and the co-founder and treasurer of a charitable foundation that provides college scholarships to graduates of his high school alma mater.

Christopher M. Barrett is an attorney at Izard, Kindall & Raabe, LLP where his practice focuses on representing plaintiffs in class actions against large companies, representing clients in complex civil litigation, and defending and counseling white collar criminal defendants.

Mr. Barrett is a member of teams currently prosecuting class actions against companies alleged to have overcharged patients for medical and prescription drug benefits, including: *Negron v. Cigna Health and Life Insurance Company*; *Neufeld v. Cigna Health and Life Insurance Company*; *Bennett v. Blue Cross and Blue Shield of Louisiana*; *Mohr-Lercara v. Oxford Health Ins., Inc.*; and *Sohmer v. UnitedHealth Group Inc.* Mr. Barrett is also a member of a team prosecuting claims alleging antitrust violations against some of the largest real estate companies in the country, in *Nosalek v. MLS Property Information Network et al.*

He has previously been involved in the prosecution of numerous successful class actions in which over \$150 million dollars have been recovered for class members, including: Paetzold v. Metropolitan District Commission (\$7.7 million, representing 100% of class losses); Medoff v. CVS Caremark Corp. (\$48 million recovery); Citiline Holdings, Inc. v. iStar Fin. Inc. (\$29 million recovery); Carpenters Pension Tr. Fund of St. Louis v. Barclays PLC (\$14 million recovery); In re Delphi Fin. Group Shareholder Litigation (\$49 million recovery); and In re OSG Sec. Litigation (\$34 million recovery, representing 93% of bond purchasers' damages and 28% of stock purchasers' damages).

Mr. Barrett also represents plaintiffs who are unable to afford legal counsel. He has served as trial counsel in significant federal felony cases and as a volunteer attorney on the District of Connecticut's Civil Pro Bono Panel.

Prior to joining Izard, Kindall & Raabe, Mr. Barrett was associated with Robbins Geller Rudman & Dowd, where his practice focused on prosecuting class actions on behalf of plaintiffs, and Mayer Brown, where his practice focused on complex commercial litigation.

Mr. Barrett is a member of the Connecticut and New York bars and is admitted to practice in the District of Connecticut, the Southern District of New York, the Eastern District of New York, and the Court of Appeals for the Second Circuit.

In 2015 through 2020, Mr. Barrett was recognized by Super Lawyers magazine as a Rising Star. Mr. Barrett received his J.D., magna cum laude from Fordham University School of Law where he served as a member of the Fordham Law Review and was inducted into the Order of the Coif and the honor society Alpha Sigma Nu. For his work in the law school's law clinic, he was awarded the Archibald R. Murray Public Service Award. He earned his B.S. in

Finance from Long Island University. During law school, Mr. Barrett served as a judicial intern to United States District Judge Shira Sheindlin (S.D.N.Y.), United District Judge Thomas Platt (E.D.N.Y.) and New York Supreme Court Justice Stephen Bucaria.

Practice areas

- Class actions on behalf of plaintiffs
- ERISA and benefits litigation
- Healthcare litigation
- White collar defense
- Complex civil litigation
- Civil rights litigation

Oren Faircloth Since joining the firm in 2018, Oren Faircloth has represented numerous retirees seeking to hold major corporations accountable. He focuses primarily on complex class actions brought under the Employee Retirement Income Securities Act (ERISA). He has investigated, developed and drafted complaints against some of America's largest corporations, including: Huntington Ingalls, Raytheon Technologies, UPS and Rockwell Automation. Mr. Faircloth has worked on ERISA cases involving actuarial equivalence, mismanagement of 401k plans, excessive fee, and breach of contract and breach of fiduciary duty matters. His persistence and dedication have contributed to substantial, multi-million dollar recoveries for plan participants and beneficiaries.

Mr. Faircloth graduated from Quinnipiac University School of Law, magna cum laude, in 2016. During law school, he worked at the State Treasurer's office, served on law review and provided tax advice to low-income individuals. He is actively involved in the community serving on the board of a non-profit and representing incarcerated individuals on a pro bono basis.

In his free time, Oren enjoys cooking, reading, skiing, and spending time with his wife and two boys.