

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

**IN RE WILLIAMS SECURITIES
LITIGATION**

This Document Relates To: WMB Subclass

Case No. 02-CV-72-SPF (FHM)

Lead Case

Judge Stephen P. Friot
Magistrate Judge Frank H. McCarthy

ECF Filed

**LEAD COUNSEL'S MOTION FOR AN
AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION
EXPENSES AND SUPPORTING MEMORANDUM OF LAW**

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With the endorsement of Lead Plaintiffs Ontario Teachers' Pension Plan Board ("Ontario Teachers") and Arkansas Teachers Retirement System ("Arkansas Teachers"), Court-appointed lead counsel for the WMB Subclass, Bernstein Litowitz Berger & Grossmann LLP ("Lead Counsel"), hereby moves for an award of attorneys' fees and the reimbursement of litigation expenses (the "Fee Request") in connection with the prosecution and settlement of this consolidated securities class action. In accordance with the Court's instruction at the October 4, 2006 hearing, this motion is made for the benefit of all plaintiffs' counsel who contributed to the prosecution of this action, including Lead Counsel, Liaison Counsel (the Burrage Law Firm), prior co-lead counsel,¹ and other class counsel who assisted with the prosecution of this action.²

I. PRELIMINARY STATEMENT

Concluding nearly four years of hard-fought litigation, Lead Plaintiffs and Lead Counsel achieved this historic \$311,000,000 all cash settlement (the "Settlement") of the claims asserted against defendants The Williams Companies, Inc. ("Williams" or the "Company"), the Individual Defendants,³ Ernst & Young, LLP ("E&Y"), and the Underwriter Defendants⁴ for alleged violations of the federal securities laws during the defined class period. The Settlement

¹ Prior to its replacement by the Court, The Seymour Law Firm was co-lead counsel with the law firm of Schoengold Sporn Laitman & Lometti, P.C. ("Schoengold Sporn"). The Seymour Law Firm did not provide its lodestar and other relevant information to Lead Plaintiffs and Lead Counsel sufficiently in advance of this filing to allow Lead Plaintiffs or Lead Counsel to review and evaluate it. As such, that information, although separately included with these papers, is not endorsed by Lead Plaintiffs or Lead Counsel. Also, all summary information (e.g., lodestar, expenses and lodestar multiplier), does not include the amounts provided by The Seymour Law Firm unless otherwise noted. Consistent with the guidance provided by the Court at the October 4, 2006 hearing, Lead Plaintiffs and Lead Counsel are not bound by the assertions made in the papers supplied by The Seymour Law Firm. Schoengold Sporn is not seeking any award of attorneys' fees or reimbursement of litigation expenses.

² Class counsel other than Lead Counsel and Liaison Counsel are referred to as "other class counsel."

³ The "Individual Defendants" include (1) the "WMB Management Defendants": Keith E. Bailey; Steven Malcolm; Jack D. McCarthy; Gary R. Belitz; and William E. Hobbs; and (2) the "WMB Director Defendants": Hugh M. Chapman; Thomas Cruikshank; W.R. Howell; Charles M. Lillis; Frank T. MacInnis; Peter C. Meinig; Janice D. Stoney; Glenn A. Cox; William E. Green; James C. Lewis; George A. Lorch; Gordon R. Parker; and Joseph H. Williams.

⁴ The "Underwriter Defendants" include: Merrill Lynch & Co.; Salomon Smith Barney Incorporated; Lehman Brothers; Credit Suisse First Boston; Banc of America Securities LLC; CIBC World Markets; Goldman, Sachs & Co.; and UBS Warburg LLC. Williams, E&Y, the Individual Defendants and the Underwriter Defendants are referred to collectively herein as "Defendants."

was achieved only after Lead and Liaison Counsel and other class counsel working under their direction, reviewed, reorganized and analyzed more than 18 million pages of documents produced by defendants and third-parties; took and defended 170 fact and expert depositions; briefed Lead Plaintiffs' motion for class certification and completed class certification discovery; retained and consulted with numerous experts in a variety of areas; moved for and opposed summary judgment motions; and participated in the complex and extremely adversarial mediation process. If approved, the Settlement will resolve all claims in this action.

The Settlement, which was reached with the substantial assistance of the Hon. Layn R. Phillips, U.S.D.J., W.D. Okla. (Ret.), a highly respected mediator with broad experience mediating complex commercial cases, including federal securities class actions such as this one, is historic by any measure. It represents the largest securities class action settlement in Oklahoma history, and ranks in the top twenty largest securities class action settlements anywhere. As set forth in the Declaration of Layn R. Phillips (the "Phillips Decl."), attached as Exhibit 1 to the Declaration of Chad Johnson in Support of the Proposed Settlement and Plan of Allocation, and an Award of Attorneys' Fees and Reimbursement of Litigation Expenses (the "Johnson Decl."), Judge Phillips – who oversaw the mediation of this action for over a year, including several face-to-face meetings with the parties and their counsel, as well as the exchange of several mediation statements and countless communications – fully endorses the Settlement. The \$311,000,000 Settlement of this heavily litigated action was accomplished as a result of the dedication and oversight of Lead Plaintiffs, and the aggressive and unwavering efforts of Lead Counsel, who, together with Liaison Counsel and other class counsel, dedicated immense time and resources, and brought to bear the skill and expertise necessary to achieve the

outstanding result for the class. Phillips Decl. ¶ 19. As explained by Judge Phillips in his declaration (at ¶ 19):

It is clear to me that the class could not have obtained \$311 million earlier than it did or without institutional investors serving as Lead Plaintiffs or without Lead Counsel and Liaison Counsel who were able to go toe-to-toe with the top-notch defense lawyers involved and the savvy and sophisticated business representatives of defendants including Williams and Ernst & Young, as well as the insurance carriers involved in the mediation of this case – all of whom displayed the highest level of professionalism in carrying out their duties on behalf of their respective clients.

The prosecution of this action was undertaken by Lead Counsel, Liaison Counsel and other class counsel on an entirely contingent basis. As described below, Lead Counsel, together with Liaison Counsel and other class counsel, incurred millions of dollars of expenses and spent over 140,000 hours prosecuting this case – time and expenses that we knew would not be compensated or reimbursed unless and until we achieved a recovery for the Class. As compensation for the efforts expended to achieve this outstanding result for the Class, Lead Counsel is applying, on behalf of all class counsel, for fees constituting 25% of the Settlement Fund net of Court-approved litigation expenses, together with interest at the same rate as earned by the Settlement Fund, and for reimbursement of class counsel's \$10,564,124.41 million of out-of-pocket expenses. The fee percentage was approved at arm's-length with Lead Plaintiffs, two sophisticated institutional investors with experience as lead plaintiffs in securities class actions and in retaining and negotiating fees with counsel. Lead Plaintiffs, who were intimately involved in every material aspect of the prosecution and mediation of the action, approved this fee percentage based on their experience in serving as lead plaintiffs in other securities class actions and with their knowledge of the attorneys' fees sought and awarded in other federal securities class actions, and in light of the risks of the litigation and the time and effort class counsel devoted. The resulting Fee Application, which would result in a very modest multiplier

of less than 1.7⁵ on class counsel's aggregate lodestar of \$47,654,162.41, is wholeheartedly endorsed by Lead Plaintiffs. Johnson Decl. ¶13; Joint Declaration of Michael Padfield and David Malone ("Lead Plaintiffs' Decl."), attached as Exhibit 2 to the Johnson Decl., ¶43. The reasonableness of this fee request is further supported by Professor Joseph C. Long, a well-respected law professor *emeritus* with the University of Oklahoma College of Law and an expert in federal securities regulation and litigation, whose declaration (the "Prof. Long Declaration") is attached as Exhibit 3 to the Johnson Decl. As Professor Long (at ¶¶13, 15) states:

Compensating and rewarding counsel for assuming such high levels of risk is important to ensuring that investors can obtain relief of this magnitude through the class action device...This fee request of 25 percent of the **net settlement fund** is well within the range of recent fee awards for similar recoveries in analogous circumstances.

For these several reasons, as discussed further below, Lead Counsel respectfully requests that the Court grant this motion for attorneys' fees and reimbursement of litigation expenses.

A. SUMMARY OF CASE PROSECUTION AND RISKS

Lead and Liaison Counsel vigorously prosecuted the Action immediately upon their appointment on January 18, 2005 [Dkt. No. 663]. Indeed, the Settlement was achieved only after fact and expert discovery were completed, and competing summary judgment motions were fully briefed and submitted. By that time, Lead Counsel had: (a) conducted extensive interviews of former Williams employees with knowledge of the facts underlying the case and otherwise exhaustively investigated the matters at issue; (b) reviewed, reorganized and carefully analyzed all of the over 18 million pages of documents produced by Defendants and non-parties in preparation for fact and expert depositions and summary judgment briefing; (c) taken and defended 170 depositions on a very compressed and demanding schedule (154 fact depositions

⁵ This figure does not take into account The Seymour Law Firm's lodestar, for the reasons noted above. Adding The Seymour Law Firm's lodestar to the calculation will result in an even *lower* multiplier.

during the last seven months of 2005 and January 2006, and 16 expert depositions in March and April 2006); (d) responded to comprehensive discovery requests from Defendants; (e) successfully prosecuted numerous complex discovery motions; (f) thoroughly briefed Lead Plaintiffs' motion for class certification and completed class certification discovery; (g) retained and consulted with experts in several areas, including accounting, auditing, energy trading, finance and damages, who submitted key reports supporting Lead Plaintiffs' claims, and defended the depositions of those experts; (h) conducted significant trial preparation, including working with jury consultants; (i) moved for summary judgment for the benefit of the class; (j) opposed thirteen motions for summary judgment filed by Defendants (in total, summary judgment briefing exceeded well 1,000 pages, not counting exhibits); (k) participated in the complex, protracted and contentious mediation process overseen by Judge Phillips over the course of more than a year; and (l) successfully negotiated the terms of the Settlement. Prior to the appointment of Lead Plaintiffs and Lead Counsel, former co-lead counsel filed the Consolidated Amended Complaint, opposed motions to dismiss, conducted certain depositions relating to document retention policies, issued some document requests, and had begun to review certain documents.

This action presented substantial risks beyond those present in many other class actions prosecuted on a contingency basis under the exacting standards of the Private Securities Litigation Reform Act of 1995 (the "PSLRA"). To begin, although the claims alleged that the Company's financial statements had been materially false and misleading, those financial statements had not been restated, and no governmental investigation had uncovered any fraud. Moreover, no Company employees had been fired, and Defendants never acknowledged that any improper conduct had occurred. As a result, Lead Counsel understood that Defendants would

strongly assert that there had been no wrongdoing; that no one other than Lead Plaintiffs had seriously pursued any claims of fraud (much less found a scintilla of evidence to support such claims); and that such allegations were wholly without merit.

Defendants also seriously contested loss causation, arguing that the drop in the price of Williams' stock was unrelated to the alleged fraud. Defendants argued that there were other significant negative market events -- such as the Enron bankruptcy -- that caused Williams' stock price to plummet. Defendants' arguments were extremely dangerous because, if accepted by the Court in a summary judgment ruling, or by the jury at trial, there may have been no recovery at all.

These substantial litigation risks were magnified by the difficulty and intricacy of the subject matter underlying the claims, which concerned complicated energy trading and accounting issues relating to Williams' obligations to WCG. Specifically, the allegations that Williams' financial statements were false and misleading required, among other things, Plaintiffs to prove that Williams' energy trading assets -- which are a complex set of arcane balance sheet accounts unique to energy traders and difficult even for seasoned certified public accountants to understand -- had been improperly inflated and accounted for. Lead Plaintiffs thus retained experts to properly understand, review, and analyze the relevant documents. Those experts included an energy trading expert to recreate Williams' complex mathematical models originally designed by Williams' best Ph.D.s, and to assess the amount, if any, of the alleged inflation of Williams' energy assets; and an accounting expert to evaluate whether Williams should have restated its financial statements and to calculate the amount of any such restatement.

The difficulties faced by Lead Counsel due to the complexity of the subject matter were further compounded by the volume of documents Defendants produced, which exceeded 18

million pages. This massive amount of information rendered the effort necessary to successfully prosecute the case to be nothing short of Herculean. Indeed, Lead and Liaison Counsel enlisted a sizable team of attorneys to review, reorganize and analyze the documents in preparation for fact and expert depositions and summary judgment briefing; retained an outside vendor to supply and support an electronic database to store the documents and to provide an efficient and effective mechanism to search them; and took and defended 170 depositions in response to the mountain of information that needed to be distilled to its critical elements. To top it all off, the vast majority of depositions were conducted in just the few months between April 2005 and January 2006.

Finally, the action's venue presented unique risks. There was substantial danger that a Tulsa jury would be disinclined to find liability against Williams, the largest employer in the region and one of the last remaining energy companies in the area. *See Phillips Decl.* ¶ 17. There was also significant risk that a Tulsa jury would not find the alleged fraud sufficiently compelling, and would view the lack of a restatement or wrongdoing uncovered by the government as an indication that there had been no wrongdoing. *Id.* Thus, even if liability was established, a Tulsa jury may not have awarded significant damages. *Id.*

It was in the face of these significant risks (and others) that Lead Plaintiffs working with Lead and Liaison Counsel achieved the \$311,000,000 all cash recovery.

B. THE BASIS FOR THE FEE REQUEST

Lead Counsel is applying for attorneys' fees for class counsel equal to 25% of the Settlement Amount net of Court-approved litigation expenses, and for reimbursement of \$10,564,124.41 million of out-of-pocket expenses incurred by class counsel in connection with the prosecution of the action. The fee percentage was approved by Lead Plaintiffs, two sophisticated institutional investors with a significant financial stake in the action, that had

firsthand knowledge of the strengths and weaknesses of the action, including the risks of litigation and achieving a recovery, and which directly observed Lead and Liaison Counsel's dedicated efforts to obtain the outstanding recovery for the Class. *See* Johnson Decl. ¶9; Lead Plaintiffs' Decl. ¶¶21-30⁶

In their review and consideration of the fee percentage, Lead Plaintiffs evaluated what, in their opinion, was a fair and reasonable fee for class counsel. *See* Lead Plaintiffs' Decl. ¶¶42-44. In this assessment, they considered the excellent result obtained in the face of the challenges and risks described above, as well as the fact that the action was resolved only after Lead and Liaison Counsel's completion of fact and expert discovery, briefing of summary judgment motions, and an intensive mediation process lasting more than a year. As a result, Lead Plaintiffs approved Lead Counsel's request for 25% of the recovery, net of Court-approved litigation expenses. *Id.*

Evaluating class counsel's work, with a full appreciation for the aggressive and innovative strategies Lead Counsel employed and the resulting outstanding recovery, Lead Plaintiffs were well-positioned to determine whether the Fee Request is fair and reasonable to the Class. As more fully set forth below, the fact that Lead Plaintiffs have approved and recommended the Fee Request should be given considerable weight. In addition, the requested percentage Lead Plaintiffs have approved – 25% of the recovery net of Court-approved litigation expenses – is well within the range of fees awarded in other large, complex and heavily litigated securities class actions in this and other Circuits, Prof. Long Decl. ¶15, and is particularly fair

⁶ These Lead Plaintiffs are what Congress envisioned as the paradigm fiduciaries for the Class. As the Court is aware, Congress enacted the PSLRA in large part to encourage sophisticated institutional investors to assume control of securities class actions to “increase the likelihood that parties with significant holdings in issuers, whose interests are more strongly aligned with the class of shareholders, will participate in the litigation and exercise control over the selection and actions of plaintiff's counsel.” *See* “Private Securities Reform Act of 1995,” H.R. Conf. Report No. 104-369, 104th Cong., 1st Sess. (1995), 1995 WL 709276, at *32. Congress believed that institutions would be in the best position to monitor the ongoing prosecution of the litigation and to assess the reasonableness of counsel's fee request. *See also In re WorldCom, Inc. Sec. Litig.*, No. 02 Civ. 3288 (DLC), 2004 WL 2591402, *20 (S.D.N.Y. Nov. 12, 2004).

and reasonable considering the substantial lodestar class counsel have amassed. *See* Prof. Long Decl. ¶49. Indeed, the Fee Request would represent a lodestar multiplier of less than 1.7,⁷ which, in view of the substantial risks undertaken by Lead Counsel, Liaison Counsel and other class counsel, is quite modest when compared to the multipliers awarded in other large, complex class actions, especially those far less procedurally advanced and aggressively litigated.

II. ARGUMENT

A. **CLASS COUNSEL SHOULD BE AWARDED A FEE BASED ON A REASONABLE PERCENTAGE OF THE COMMON FUND CREATED FOR THE CLASS**

The Supreme Court has long recognized that, when a representative plaintiff successfully establishes a common fund in which others have a beneficial interest, the costs of litigation should be spread among the fund's beneficiaries. *See, e.g., Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) (“[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.”). The Supreme Court has further emphasized that private securities actions, such as this one, provide “‘a most effective weapon in the enforcement’ of the securities laws and are ‘a necessary supplement to [SEC] action.’” *Bateman Eichler, Hill Richards, Inc. v. Berner*, 472 U.S. 299, 310 (1985) (quoting *J. I. Case Co. v. Borak*, 377 U.S. 426, 432 (1964)). The Tenth Circuit has expressly recognized this Court’s right to award attorneys’ fees from a common fund in situations where, as here, that fund is the result of the attorney’s successful prosecution of the action. *See, e.g., Law v. NCAA*, 2001 U.S. App. LEXIS 3066, at *6-7 (10th Cir. 2001); *Gottlieb v. Barry*, 43 F.3d 474, 482 (10th Cir. 1994); *Brown v. Phillips Petroleum Co.*, 838 F.2d 451, 454 (10th Cir. 1988); *see also Rosenbaum v. MacAllister*, 64 F.3d 1439, 1444 (10th Cir. 1995) (“The Common Fund doctrine ‘rests on the perception that persons who obtain the benefit of a lawsuit

⁷ As noted above, the multiplier will be even lower when the Seymour Law Firm’s lodestar figures are added to other class counsel’s lodestar.

without contributing to its costs are unjustly enriched at the successful litigant's expense.”) (citation omitted).

Well-established Tenth Circuit precedent expressly favors awarding attorneys' fees based on a percentage of a common fund created by the litigation. In *Brown*, the Tenth Circuit affirmed the propriety of awarding attorneys' fees on a percentage basis in a common fund case. 838 F.2d at 454. In *Gottlieb*, the Tenth Circuit reversed a District Court decision not to adopt a special master's fee award based on the percentage of the fund method, making clear that although either the percentage or the “lodestar” method can be used in appropriate cases, the percentage approach is preferred. 43 F.3d at 483 (citing *Uselton v. Comm. Lovelace Motor Freight*, 9 F.3d 849, 853 (10th Cir. 1993)); see also *Millsap v. McDonnell Douglas Corp.*, No. 94-CV-633-H(M), 2003 U.S. Dist. LEXIS 26223, at *41 (N.D. Okla. May 28, 2003) (Holmes, J.) (“Attorneys must have an incentive to take undesirable cases in order to assure access to the courts for all people; awarding fees based on a reasonable percentage of the recovered fund provides such an incentive.”). Indeed, the Supreme Court, the First, Third, Sixth, Seventh, Ninth, Tenth, Eleventh and District of Columbia Circuits and legal commentators all overwhelmingly favor this method.⁸ Accordingly, Lead Counsel, Liaison Counsel and class counsel should be awarded a reasonable percentage of the settlement fund obtained.

⁸ *Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984); *Third Circuit Task Force Report*, 108 F.R.D. 237, 246-49, 254-59 (3d Cir. 1985) (identifying nine major flaws with lodestar method and recommending that fee awards in traditional common fund cases be based on a percentage of the recovery). After issuance of the Task Force Report, nearly every circuit has joined in approving the percentage-of-the-fund method in common fund cases. See, e.g., *In re Thirteen Appeals Arising out of the San Juan Dupont Plaza Hotel Fire Litig.*, 56 F.3d 295, 306-07 (1st Cir. 1995); *Savoie v. Merch. Bank*, 166 F.3d 456, 460 (2d Cir. 1999); *In re GMC Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 820-21 (3d Cir. 1995); *Rawlings v. Prudential Bache Props., Inc.*, 9 F.3d 513, 515-17 (6th Cir. 1993); *Florin v. Nationsbank, N.A.*, 34 F.3d 560, 563 (7th Cir. 1994); *Johnston v. Comerica Mortg. Corp.*, 83 F.3d 241, 246-47 (8th Cir. 1996); *Camden I Condominium Ass'n v. Dunkle*, 946 F.2d 768, 773-74 (11th Cir. 1991); *Swedish Hosp. Corp. v. Shalala*, 1 F.3d 1261, 1271 (D.C. Cir. 1993). Indeed, Professor Charles Silver of the University of Texas School of Law, a leading class actions and attorneys fees scholar, has written that “[i]t is as clear as it possibly can be that judges should not apply the lodestar method in common fund class actions. The Due Process Clause requires them to minimize conflicts between absent claimants and their representatives. The contingent percentage approach accomplishes this.” Charles Silver, *Class Actions in the Gulf South Symposium: Due Process and the*

B. LEAD COUNSEL’S FEE REQUEST IS WELL WITHIN THE RANGE OF REASONABLENESS OF OTHER PERCENTAGE AWARDS

The percentage requested here, 25% net of Court-approved litigation expenses, is a reasonable award and well within the normal range of awards made in contingency fee class actions within this Circuit and throughout the United States. In fact, the Tenth Circuit in *Gottlieb* expressly approved the special master’s recommended fee award “because the 22.5% selected by the master is *well within the range of permissible reasonable fee awards.*” *Id.* at 487-88 (emphasis added) (citing, among other authority, *Torrissi v. Tucson Elec. Power Co.*, for the proposition that 25% of a common fund “is the ‘benchmark’ award,” 8 F.3d 1370, 137 (9th Cir. 1993), *aff’d sub. nom. Reilly v. Tucson Elec. Power Co.*, 512 U.S. 1220 (1994)); *see also Pincay Invs. Co. v. Covad Commc'n Group, Inc.*, 2004 WL 326392, at *2 (9th Cir. Feb. 18, 2004) (reaffirming 25% as benchmark percentage); *Millsap*, 2003 WL 21277124 at *6 (“The Court of Appeals for the Tenth Circuit has recognized 25% of the fund as the “benchmark” award in common fund cases”) (citing *Barry* and *Torrissi*). Indeed, the chart below lists numerous post-PSLRA securities class action cases within the Tenth Circuit in which fees of 25% and greater were approved:

CASE	PERCENTAGE AWARD
<i>In re Boston Chicken, Inc. Sec. Litig.</i> , No. 97-cv-1308-WDM-PAC (D. Colo. Aug. 10, 2006) (settled during discovery, before depositions)	29%
<i>In re Novell, Inc. Sec. Litig.</i> , No. 2:99-CV-995 TC (D. Utah May 26, 2005) (settled during discovery, before depositions)	30%
<i>Rasner v. First World Commc'ns Inc.</i> , No. 00-K-1376 (D. Colo. Jan. 19, 2005) (discovery included only 1.5 million pages of documents and approximately 65 fact and expert depositions)	33%

Lodestar Method: You Can’t Get There From Here, 74 Tul. L. Rev. 1809, 1819-20 (2000). Not surprisingly, the PSLRA supports the use of the percentage of the fund method to determine the reasonableness of fee awards in securities fraud class actions. *See* 15 U.S.C. § 78u-4(a)(6) (“[t]otal attorneys’ fees and expenses awarded by the court to counsel for the plaintiff class shall not exceed a reasonable percentage of the amount of any damages and prejudgment interest actually paid to the class”).

CASE	PERCENTAGE AWARD
<i>Angres v. Smallworldwide PLC</i> , No. 99-K-1254 (D. Colo. June 7, 2003) (discovery included only 500,000 pages of documents and approximately 50 fact and expert depositions)	33%
<i>Markus v. The North Face, Inc.</i> , C.A. No. 99-Z-473 (D. Colo. May 1, 2001) (settled before motion to dismiss decided)	25%
<i>In re Samsonite Corp. Sec. Litig.</i> , C.A. No., 98-K-1878 (D. Colo. July 25, 2000) (settled before motion to dismiss decided)	25%
<i>Schaffer v. Evolving Sys., Inc.</i> , C.A. No. 98-WY-1338-CB (D. Colo. Oct. 4, 1999) (settled before document discovery)	30%
<i>In re Einstein Noah Bagel Corp. Sec. Litig.</i> , C.A. No. 97-N-1614 (D. Colo. June 4, 1999) (settled before motion to dismiss decided)	30%
<i>Queen Uno Ltd. P'ship, et al. v. Coeur D'Alene Mines Corp.</i> , No. 97-WY-1431-CB (D. Colo. Aug. 11, 1999) (settled during discovery, before depositions)	30%

The 25% attorneys' fee requested by Lead Counsel here, in a hotly contested and heavily litigated case, is reasonable, especially considering the higher percentages awarded in the cases that were not as procedurally advanced or as heavily litigated. In addition, in securities class actions that have settled in the \$100 million to mid-\$300 million range, fee awards between 20-30% are typical. See Prof. Long Decl., Table 1 and ¶¶40-41.

C. THE JOHNSON FACTORS DECIDEDLY SUPPORT THE FEE REQUESTED HERE

In accord with the Tenth Circuit's ruling in *Gottlieb*, the Court is required to consider the twelve factors set forth in the Fifth Circuit's decision in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974). See *Gottlieb*, 43 F.3d at 483 ("the court must consider the twelve *Johnson* factors" to determine the reasonableness of a common fund fee award); *Millsap*, 2003 WL 21277124, at *4 (same). The *Johnson* factors, which are discussed below, strongly support the reasonableness of the requested fee in this case.⁹

⁹ The Tenth Circuit has also recognized that "rarely are all of the *Johnson* factors applicable" in a common fund case. *Brown*, 838 F.2d at 456; see also *Useton*, 9 F.3d at 853 (stating that "applicability and weight" of the *Johnson* factors will "undoubtedly be different" in common fund and statutory fee determinations). Recognizing

1. Time and Labor Involved

As described in detail in Section A of the Preliminary Statement, “Summary of Case Prosecution and Risks,” and in the accompanying Johnson Declaration, successfully prosecuting this case for the benefit of the Class required a monumental effort by Lead Counsel, Liaison Counsel and other class counsel to complete discovery (including reviewing and analyzing over 18 million pages of documents and taking and defending 170 fact and expert depositions), fully briefing summary judgment (including opposing 13 separate motions), mediating for over a year, and preparing for trial. *See* Johnson Decl. ¶¶72-79. The complexity of the alleged fraud and of the Williams’ business segments at the heart of the case required Lead Counsel to diligently probe and aggressively pursue the claims on behalf of the class through significant challenges; indeed, Defendants vigorously fought Lead Plaintiffs at every turn.

The negotiation of the Settlement also required extensive efforts on the part of Lead and Liaison Counsel. Johnson Decl. ¶106; Phillips Decl. ¶¶5-18. Mediation discussions with Defendants and their insurance carriers spanned more than a year. *Id.* As described by Judge Phillips, those efforts were essentially futile at the time Lead Counsel first took over the prosecution of the action, and appeared doomed at several points afterwards, as the parties often could not even agree upon a range within which to conduct settlement discussions. *Id.* Lead and Liaison Counsel were therefore involved in multi-faceted settlement negotiations in which we maximized the class’s recovery in the face of substantial litigation risks. *Id.*

The number of hours class counsel expended (140,483 hours, not including time spent by The Seymour Law Firm) attests to the aggressive and extensive effort by all concerned. Johnson Decl. ¶133. The cumulative lodestar of Lead Counsel and class counsel is \$47,654,162.41. *Id.*

that the relevance of each of the *Johnson* factors will vary in any particular case, the Tenth Circuit has left it to the lower courts’ discretion to apply the factors in view of the circumstances of the case. *Brown*, 838 F.2d at 456.

Thus, the Fee Request implies a multiplier of less than 1.7 for all hours invested in the case by Lead and Liaison Counsel and all other class counsel. The time and labor that needed to be devoted by counsel here amply supports the requested fee.

2. The Novelty and Difficulty of Questions Raised by the Litigation

Courts have long recognized that the novelty and difficulty of the issues in a case are significant factors in determining a fee award.¹⁰ This case is among the largest securities class actions in history, and, as described at Section A, above, it involved highly complex and novel issues of law and fact that presented daunting challenges. Establishing scienter without a restatement of Williams' financial statements, or other admission by Williams of any misrepresentations, and without any governmental or other investigating body finding evidence of wrongdoing, would have been an extremely difficult task, as would have been establishing loss causation and damages under the circumstances of this action in light of the Supreme Court's recent opinion in *Dura Pharms., Inc. v. Broudo*, 544 U.S. 336 (2005). These complex issues necessitated the involvement of experts on complex corporate accounting, auditing, valuation of energy tolling agreements, risk management processes and practices, the telecommunications industry, director and underwriter due diligence obligations, and damages. See Johnson Decl. ¶¶60-67. And, of course, a Tulsa jury may not have awarded significant damages against Williams. See Phillips Decl. ¶ 17. Compounding all of those risks, is that, in

¹⁰ As noted in *Miller v. Woodmoor Corp.*, prosecution of any class action in the securities area presents inherently complex and novel issues:

Despite years of litigation, the area of securities law has gained little predictability. There are few "routine" or "simple" securities actions. Courts are continually modifying and/or reversing prior decisions in an attempt to interpret the securities laws in such a way as to follow the spirit of the law while adapting to new situations which arise. Indeed, many facets of securities law have taken drastically new directions during the pendency of this action . . .

Nos. 74-F-988, 76-F-567, 1978 U.S. Dist. LEXIS 15234, at * 11-12 (D. Colo. Sept. 28, 1978); see also *In re Sumitomo Copper Litig.*, 189 F.R.D. 274, 281 (S.D.N.Y. 1999) ("'[C]lass action suits' in general 'have a well-deserved reputation as being most complex.'...[F]ederal courts, including this Court, 'have long recognized that [securities class actions are] notably difficult and notoriously uncertain.'" (internal citations omitted).

all likelihood, any successful outcome would have been appealed. Indeed, in complex and substantial cases such as this, even a victory at the trial level does not guarantee ultimate success.¹¹ Thus, despite the several novel and difficult complex questions raised in this action, Lead Counsel succeeded in obtaining a significant recovery for the benefit of the Class.

3. The Skill Required to Perform the Legal Services Properly and the Experience, Reputation and Ability of the Attorneys

Two other relevant *Johnson* factors for evaluating the Fee Request are the skill required to properly perform the legal services and the experience, reputation and ability of counsel.¹² In most cases, the best evidence of what essentially is the quality of class counsel's representation of a class is the outstanding results achieved; indeed, the \$311,000,000 cash Settlement here is itself a testament to Lead Counsel's, Liaison Counsel's, and other class counsels' skill and expertise. *See WorldCom*, 388 F. Supp. 2d at 357-58 (evaluating quality of representation by reference to the substantial risks faced by counsel, which "obtained remarkable settlements for the Class while facing formidable opposing counsel from some of the best defense firms in the country"); *In re Lucent Techs., Inc. Sec. Litig.*, 327 F. Supp. 2d 426, 427 (D.N.J. 2004) ("the result itself evidences counsel's skill and efficiency"). As described above and in the *Johnson*

¹¹ As the Court stated in *In re Warner Commc'ns Sec. Litig.*:

Even a victory at trial is not a guarantee of ultimate success. If Lead Plaintiffs were successful at trial and obtained a judgment for substantially more than the amount of the proposed settlement, the defendants would appeal such judgment. An appeal could seriously and adversely affect the scope of an ultimate recovery, if not the recovery itself.

618 F. Supp. 735, 747-48 (S.D.N.Y. 1985) (*citing* numerous examples), *aff'd*, 798 F.2d 35 (2d Cir. 1986); *see Robbins v. Koger Props.*, 116 F.3d 1441, 1446-49 (11th Cir. 1997) (reversing \$81 million jury verdict for Plaintiffs in securities class action after five years of litigation); *In re Luxottica Group S.p.A Secs. Litig.*, 233 F.R.D. 306, 316 (E.D.N.Y. 2006) ("'Victory—even at the trial stage—is not a guarantee of ultimate success.' Delay at the trial stage and through post-trial motions and the appellate process might have forced class members to wait years longer for any recovery. This would have increased the amount of fees payable to plaintiffs' counsel and reduced the value of any award to the class.") (*citing In re Michael Milken & Assoc. Sec. Litig.*, 150 F.R.D. 46, 53 (S.D.N.Y.1993)).

¹² The firm resumes of Lead Counsel, Liaison Counsel and other class counsel, which demonstrate their background and experience, are being submitted in support of the Fee Request.

Declaration, Lead Counsel's innovative, aggressive and dedicated prosecution of this action resulted in one of the largest securities class action recoveries in U.S. history.

The quality of Defendants' counsel also is important in evaluating the quality of class counsel's work. Indeed, Judges Cote in *WorldCom* and Pisano in *Lucent* both also noted that in the cases before them, as here, "Lead Counsel obtained remarkable settlements for the Class while facing formidable opposing counsel from some of the best defense firms in the country." *WorldCom*, 388 F. Supp. 2d at 357-58; *accord Lucent*, 327 F. Supp. 2d at 437 ("The fact that Common Shareholders Lead Counsel for the Plaintiffs obtained a favorable settlement from parties represented by awesome adversaries underscores the quality of their representation."). Here, Defendants were represented by four national law firms and an equal number of preeminent Oklahoma law firms, each with reputations for vigorous advocacy in the defense of complex cases such as the present action. *See Phillips Decl.* ¶¶10-11 ("As far as the legal talent involved in this case was concerned, from my personal experience with the firms involved and from what I directly observed in this case, this was a match among equals.")

In sum, it took considerable skill to achieve this Settlement. Class counsel demonstrated considerable expertise in federal securities laws, class actions and other federal practices and procedures, as a result of which they brought Defendants to the negotiating table, all to the benefit of the class. Accordingly, these factors also support the Fee Request.

4. The Preclusion of Other Employment by Attorneys Due to Acceptance of the Case

There is no question that Lead and Liaison Counsel and other class counsel devoted such significant resources, time and expense to the prosecution of this action that those involved were precluded from other employment. The magnitude and complexity of this case, in addition to the intense discovery schedule conducted here – which included conducting 170 fact and expert

depositions within a compressed time period – certainly diverted counsels’ attention from engaging in other matters. Quite simply, there are few firms that have the breadth of experience, as well as the financial wherewithal, to have devoted anywhere near the same resources to the prosecution of this case, and to effectively counter the waves of highly skilled and motivated defense counsel seeking on a regular basis to slow down or stop the prosecution of this action.

5. The Customary Fee for Similar Work

It is customary for counsel in securities class actions to accept responsibility for prosecuting these cases on a contingency basis and to bear the full risk and expense of doing so. As is set forth in Section B above, the 25% fee requested in this case is squarely in line with the “benchmark” discussed by the Tenth Circuit in *Gottlieb*, as well as the historical fee awards in similar securities class actions by other district courts within this Circuit and across the nation. And whether the Court considers percentage fees, or looks to lodestar multipliers as a comparator for customary fee awards, the 25% fee requested, which implies a very modest less than a 1.7 multiplier, the Fee Request compares favorably with those cases in which higher fee percentages and often higher multipliers were awarded, particularly in cases that were less procedurally advanced, not as highly contested or not as overwhelmingly time consuming.

6. Whether There Was a Prearranged Fee

Because of the unique circumstances of this case, including the withdrawal of the prior lead plaintiff and the mid-stream appointment of Ontario Teachers and Arkansas Teachers as Lead Plaintiffs, it was decided that the most sensible approach would be to determine a proposed fee later in the action in order to allow Lead Plaintiffs to evaluate Lead Counsel’s and Liaison Counsel’s, and other class counsels’ contributions to the case when settling on an appropriate fee. The quantity and quality of the work required by Lead and Liaison Counsel (and other class counsel working with them) to achieve the \$311,000,000 settlement was extraordinary. Lead

Plaintiffs, two sophisticated institutional investors with experience as lead plaintiffs in securities class actions and in retaining and negotiating fees with counsel, and which had substantial interests in the action and were intimately involved in every material aspect of its prosecution and mediation, have approved the requested fee percentage in light of the risks of the litigation and the significant contributions made by Lead and Liaison Counsel and other class counsel. *See* Lead Plaintiffs' Decl. ¶¶41-44

7. Time Limitation Imposed by Client or Circumstances

Lead Counsel faced numerous time constraints during this labor-intensive case, and at all times performed at the highest level of legal skill. For instance, less than two weeks after Lead Plaintiffs were appointed on January 18, 2005, Lead Counsel filed Lead Plaintiffs' motion to certify the class, and immediately thereafter proceeded with class certification discovery. *See* Johnson Decl. ¶41. Similarly, after reviewing and analyzing the millions of documents produced, Lead Counsel took and defended 170 depositions, beginning only a few months after being appointed as Lead Counsel. *Id.* ¶¶75-79. In barely four weeks time, Lead Plaintiffs responded to Defendants' thirteen summary judgment motions and briefs in support thereof, which comprised over 525 pages of briefing and thousands of pages of exhibits. There is little doubt that the excellent results achieved by the Settlement could not have been obtained absent Lead Counsel's ability to function at the highest levels under severe time constraints.

8. The Amount Involved and the Results Obtained

Courts consistently recognize that the result achieved is a major factor to be considered in making a fee award. Indeed, as the Tenth Circuit stated in *Brown*, "in a common fund case . . . the amount involved and the results obtained . . . may be given greater weight when, as in this case, the trial judge determines that the recovery was highly contingent and that the efforts of counsel were instrumental in realizing recovery on behalf of the class." 838 F.2d at 456. As

noted above, this Settlement represents the largest securities class action settlement in Oklahoma history, and ranks in the top twenty largest securities class action settlements in U.S. history. Further, the Settlement was achieved in the face of inherent contingent risks, a rigorous discovery and pre-trial schedule, and vigorous defenses advanced by able defense counsel. Lead Counsel also obtained this Settlement without unnecessary delay, thereby providing the class with a real benefit without having to wait untold additional years with no assurances of recovering as much or anything at all. The result achieved by the Settlement – \$311,000,000 in cash (plus interest) for the benefit of the Class – is an excellent result favoring the Fee Request.

9. The Undesirability of the Case

As the court aptly observed in *In re King Resources Co. Sec. Litig.*:

The litigation also involved unique and substantial issues of law in the technical area of SEC Rule 10b-5...difficult, complex and oft-disputed class action questions, and difficult questions regarding computation of damages.

* * *

In evaluating the services rendered in this case, appropriate consideration must be given to the risks assumed by plaintiffs' counsel in undertaking the litigation. The prospects of success were by no means certain at the outset, and indeed, the chances of success were highly speculative and problematical.

420 F. Supp. 610, 632, 636-37 (D. Colo. 1976); *Lucas v. Kmart Corp.*, Civ. Action No. 99-cv-01923-JLK-CBS, 2006 U.S. Dist. LEXIS 51420, at *20 (D. Colo. July 27, 2006) (“Given the risk of no recovery and . . . unsettled legal issues . . . this was not a desirable case to take”). In agreeing to take on this action on a contingent basis, Lead and Liaison Counsel and other class counsel recognized that it would require a substantial investment of resources to maximize the recovery for the class, with no promise of a recovery of their substantial investment. Thus, this action was plainly a high risk, or “undesirable,” case.

10. The Nature and Length of the Professional Relationship With the Client

Lead Plaintiffs have each retained and worked with Lead Counsel in other securities class actions. Lead Plaintiffs retained Lead Counsel based on, among other things, Lead Plaintiffs' prior experience with Lead Counsel, as well as Lead Plaintiffs' experience in retaining and evaluating the performance of outside counsel. As explained by Lead Plaintiffs in their declaration (at ¶ 18), "Both of our funds have previously retained and worked with Bernstein Litowitz in connection with separate securities actions, and we have found their work and professionalism to be of the highest caliber."

11. Awards in Similar Cases

As demonstrated by the decisions cited in Section B above, the 25% fee requested here is fully consistent with, and, in fact, lower than, percentage fee awards customarily made in similar cases in the Tenth Circuit. Indeed, the fee percentage requested by Lead Counsel here, in a very hotly contested and, therefore, heavily-litigated case, is particularly reasonable compared to the higher percentages awarded in cases that were not as procedurally advanced or as heavily litigated.

D. THE FEE REQUESTED IS ALSO FAIR AND REASONABLE UNDER A LODESTAR/MULTIPLIER ANALYSIS

Under the lodestar method of analyzing a fee request, the number of hours counsel worked is multiplied by the standard hourly rate for each professional to derive a "lodestar," which is enhanced "by an appropriate multiplier to reflect litigation risk, the complexity of the issues, the contingent nature of the engagement, the skill of the attorneys, and other factors." *In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 466 (S.D.N.Y. 2004); *see Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 123 (2d Cir. 2005). In this case, class counsel's total lodestar (not including Seymour's lodestar) is \$47,654,162.41 million. *See Johnson Decl.*

¶134. This represents 140,483 hours expended by attorneys and paraprofessionals – a prodigious effort – during the prosecution of this action. *Id.* The requested fee would represent a multiplier of less than 1.7. *Id.* The lodestar is broken down by law firm in the declarations that each class counsel is submitting herewith. *See* Compendium of Class Counsel’s Declarations.¹³ Lead Counsel at all times sought to avoid unnecessary work and expense in this action by streamlining the discovery process as much as possible, and avoiding, or at least minimizing, duplication of effort among attorneys and law firms. *See* Johnson Decl. ¶136.

As highlighted by Professor Long, multipliers ranging from three to above five are typical in complex actions like this one. *See* Prof. Long Decl. ¶40. Indeed, in difficult and complex corporate litigations, lodestar multipliers of two to four are common within this Circuit. *See, e.g., Lucas v. Kmart Corp.*, 2006 U.S. Dist. LEXIS 51420, at *19 (“Under the enhanced lodestar approach, courts typically award multipliers of 2 to 3 times the lodestar”); *Markus v. The North Face, Inc.*, C.A. No. 99-Z-47 (D. Colo. May 1, 2001) (awarding fee equal to a 2.9 multiplier in a case that settled before motions to dismiss were decided), *In re Samsonite Corp. Sec. Litig.*, C.A. No. 98-K-1878 (D. Colo. July 25, 2000) (awarding fee equal to a 3.45 multiplier in a case that settled before motions to dismiss were decided); *Schaffer v. Evolving Systems, Inc.*, C.A. No. 98-WY-1338-CB (D. Colo. Oct. 4, 1999) (awarding fee equal to a 2.19 multiplier in a case settled before document discovery).¹⁴

While the number of hours expended by class counsel is significant, given the size and complexity of this action, the effort was absolutely necessary. This approach resulted in an

¹³ This also includes materials supplied by The Seymour Law Firm. As noted above, Lead Plaintiffs and Lead Counsel do not endorse the information provided by The Seymour Law Firm, nor are they bound by it (in accordance with the guidance provided by the Court at the October 5, 2006 hearing).

¹⁴ *See also Kurzweil v. Philip Morris Cos.*, Nos. 94 civ. 2373, 94 civ. 2546, 1999 U.S. Dist. LEXIS 18378, at *7-8 (S.D.N.Y. Nov. 24, 1999) (recognizing that when cross checking the common fund approach with the lodestar method, multipliers of between 3 and 4.5 are common in federal securities cases).

outstanding recovery for the class now, rather than obtaining the same, or a lesser amount, or perhaps no recovery, after incurring massive additional amounts of time and expenses. The implied multiplier of less than 1.7 is eminently reasonable; in fact, courts across the country have not shied away from approving substantially higher multipliers in complex class actions, like this one, with outstanding results in the face of substantial risks.¹⁵ The modest multiplier implied here confirms the reasonableness of the 25% Fee Request.

E. PUBLIC POLICY CONSIDERATIONS SUPPORT THE REQUESTED FEE

As numerous courts and observes have noted, the PSLRA favors the appointment of institutions as lead plaintiffs. *See, e.g., WorldCom*, 2004 WL 2591402, at *19. Lead Plaintiffs are sophisticated institutional investors that are experienced serving as lead plaintiffs in complex securities class actions. *Id.*; Lead Plaintiffs' Decl. ¶7. Between them, Lead Plaintiffs lost millions of dollars as a result of the alleged fraud, and have been extremely diligent in their supervision of and participation in Lead Counsel's prosecution and mediation of this case, which included direct supervision of Lead Counsel's preparation of key pleadings, correspondence with the Court, and negotiations with Defendants. *See id.* ¶¶21-30. Here, as in *WorldCom*, Lead Plaintiffs "conscientiously supervised the work of Lead Counsel and give[] [their] endorsement to the fee request." *See WorldCom* at *19; Lead Plaintiffs' Decl. ¶17-20. Therefore, "the

¹⁵ *See, e.g., In re Nortel Networks Corp. Sec. Litig.*, No. 05-MD-1659 (LAP), slip op. at 10 (S.D.N.Y. Dec. 26, 2006) (in settlement valued at \$1.2 billion, approving fee with implied multiplier of approximately 5.5); *In re Ahold N.V. Sec. & ERISA Litig.*, ___ F. Supp. 2d ___, 2006 WL 3313777, at *1 (D. Md. Nov. 2, 2006) (approving multiplier of 3.21 in settlement of \$1.1 billion); *In re Charter Comms, Inc. Sec. Litig.*, No. MDL 1506, 4:02-CV-1186 CAS, 2005 WL 4045741, at *18 (E.D. Mo. June 30, 2005) (a multiplier of 5.61 "falls within the range of multipliers found reasonable for cross-check purposes by courts in other similar actions, and is fully justified here given the effort required, the hurdles faced and overcome, and the results achieved"); *In re Rite Aid Corp. Sec. Litig.*, MDL No. 1360, 2005 WL 697461 at *2-3 (E.D. Pa. Mar. 24, 2005) (multiplier of 6.96); *In re Xcel Energy, Inc., Sec., Deriv. & "ERISA" Litig.* 364 F. Supp. 2d 980 (D. Minn. 2005) (multiplier of 4.7); *Maley v. Del Global Techs. Corp.*, 186 F. Supp. 2d 358, 371 (S.D.N.Y. 2002) (approving 33% of recovery representing a multiplier of 4.65); *In re Cendant Corp. Prides Litig.*, 51 F.Supp.2d 537 (D.N.J. 1999), *vacated and remanded*, 243 F.3d 722 (3d Cir.2001), *on remand*, No. 98-2819 (D.N.J. June 11, 2002) (multiplier of 5.28); *Di Giacomo v. Plains All Am. Pipeline*, Nos. H-99-4137, H-99-4212, 2001 WL 3463337 at *10 (S.D. Tex. Dec. 18, 2001) (multiplier of 5.3); *In re Sumintomo Copper Litig.*, 74 F. Supp. 2d 393, 399 (S.D.N.Y. 1999) (awarding a 27.5% fee and finding multipliers of 3 to 4.5 to be common); *Roberts v. Texaco, Inc.*, 979 F. Supp. 185, 197 (S.D.N.Y. 1997) (multiplier of 5.5).

requested fee is entitled to a presumption of reasonableness.” *WorldCom*, 2004 WL 2591402, at *19.

Moreover, private lawsuits such as this serve to further the objective of the federal securities laws to protect investors and consumers against fraud and other deceptive practices.

As Judge Cote observed in *WorldCom*:

Public policy also supports the approval of this fee request...If the Lead Plaintiff had been represented by less tenacious and competent counsel, it is by no means clear that it would have achieved the success it did here on behalf of the Class. In order to attract well-qualified plaintiffs’ counsel...it is necessary to provide appropriate financial incentives. After all, this litigation was conducted on an entirely contingent fee basis, and Lead Counsel paid millions of dollars to fund the litigation. While some significant recovery in a case of this magnitude may seem a foregone conclusion now, the recovery achieved here was never certain...[I]t is likely that less able plaintiffs’ counsel would have achieved far less.

388 F. Supp. 2d at 359. For the majority of class members, this action was their only hope of obtaining compensation for the losses they suffered as a result of the alleged fraud at Williams. In such circumstances, “[p]rivate attorneys should be encouraged to take the risks required to represent those who would not otherwise be protected from socially undesirable activities like securities fraud.” *Del Global*, 186 F. Supp. 2d at 374.

F. THE EXPENSES REQUESTED WERE REASONABLE AND NECESSARY TO THE PROSECUTION OF THIS ACTION

Lead Counsel also apply for reimbursement of \$10,564,124.41 million of litigation expenses incurred in prosecuting this action. Johnson Decl. ¶12¹⁶ Expenses are compensable in a common fund case if the costs are those typically billed by attorneys to paying clients in the

¹⁶ As noted in Lead Plaintiffs’ Joint Declaration, The Seymour Law Firm has not given Lead Plaintiffs or Lead Counsel an opportunity to review the backup, support, or detail for its purported expenses. Lead Plaintiffs’ Decl.¶ 43. Accordingly, Lead Plaintiffs and Lead Counsel cannot endorse the expenses for which The Seymour Law Firm may seek reimbursement. Nonetheless, those expenses are included in this application consistent with the Court’s guidance at the October 4, 2006 hearing. Because Seymour does not represent a client in this action, Seymour’s expenses have not been reviewed and evaluated by any client. Lead Plaintiffs reserve judgment as to whether expenses asserted by The Seymour Law Firm should be entitled to reimbursement.

marketplace. *See Bratcher v. Bray-Doyle Indep. Sch. Dis.*, 8 F.3d 722, 725-26 (10th Cir. 1993) (holding that expenses reimbursable if such charges would normally be billed to client) (citing *Bee v. Greaves*, 910 F.2d 686, 690 (10th Cir. 1990)); *Kelley v. City of Albuquerque*, No. Civ. 03-507 JBACT, 2005 WL 3663515, at *17-18 (D.N.M. Oct. 24, 2005) (awarding reasonable expenses that would normally be billed to paying client).¹⁷ The expenses incurred here were essential to the successful prosecution and resolution of this action.¹⁸

Lead Plaintiffs have incurred considerable expenses for experts and consultants retained by Lead Counsel. *See* Johnson Decl. ¶¶140-141. Lead Counsel retained experts in the fields of, among others, accounting/financial reporting, underwriter/director due diligence, energy marketing and trading, telecommunications, and damages – all of whom were invaluable and assisted Lead Counsel in reviewing and analyzing the documents produced in this case, and also testified in connection with expert discovery. *Id.* These experts significantly contributed to the prosecution and resolution of the action and the cost incurred for these experts is reasonable and not unusual in a case of this magnitude and complexity. *Id.* In addition, Lead Counsel incurred substantial expense to create and maintain the electronic database necessary to facilitate the reorganization, review and analysis of the more than 18 million pages of documents produced in this action. *See id.* ¶142. Those costs were not only necessary, but actually saved significant expense and time because the electronic document database enabled Lead Counsel to more effectively and efficiently review, code, and search those documents. These expenses also are

¹⁷ Decisions by other Courts of Appeals confirm this practice. *See, e.g., Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (approving expenses normally charged to a fee-paying client); *Associated Builders & Contractors, Inc. v. Orleans Parish Sch. Bd.*, 919 F.2d 374, 380 (5th Cir. 1990) (reimbursing all reasonable out-of-pocket expenses recoverable because costs as normally charged to fee-paying clients).

¹⁸ Some of the expenses for which class counsel seek reimbursement were paid out of a Litigation Fund contributed to by Lead and Liaison Counsel and other class counsel, which was maintained by Lead Counsel. A full accounting of the payments to and expenditures by the Litigation Fund is set forth in Exhibit 7 to the Johnson Declaration Lead Counsel will provide any additional documentation requested by the Court.

reasonable and typical in document-intensive securities cases like this one. *See id.* ¶141. The other expenses that class counsel incurred are routinely charged to clients and relate principally to filing fees, computerized legal research, photocopying costs, and travel expenses related to depositions, court hearings, and mediation. *See id.* ¶142.¹⁹

Lead Counsel respectfully submits that all of the foregoing reimbursement requests are appropriate, fair and reasonable, and should be approved.

III. CONCLUSION

Based upon the foregoing and upon the entire record, Lead Counsel with the approval of Lead Plaintiffs, respectfully requests that the Court award attorneys' fees of 25% of the net Settlement Fund together with an expense reimbursement of \$10,566,581.37 million.

Dated: January 12, 2007

Respectfully submitted,

/s/ Chad Johnson

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Subclass*

¹⁹ In accordance with the PSLRA, the expense reimbursement request includes a total of \$36,431.76 in "reasonable costs and expenses (including lost wages)" incurred by the proposed Class Representatives, including Lead Plaintiffs, directly relating to the representation of the Class. 15 U.S.C. § 78u-4(a)(4).

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