

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

JOHN CECIL,
on behalf of himself and all others similarly
situated,

Plaintiff,

Civil Action No. 16-CV-00410-KEW

vs.

BP AMERICA PRODUCTION COMPANY
(f/k/a Amoco Production Company)
(including BP Amoco Corporation, ARCO,
BP Exploration, Inc., BP Corporation North
America, Inc., and BP Energy Company),

Defendant.

**DECLARATION OF TERRY J. BARKER IN SUPPORT OF
PLAINTIFF'S ATTORNEYS' FEES AND LITIGATION EXPENSES**

I, Terry J. Barker, under penalty of perjury, declare as follows:

1. I am one of the attorneys for Plaintiffs in *Chockley, et al. v. BP America Production Co.*, No. CJ-2002-84, a putative class action that was filed on October 4, 2002 and is pending in the District Court for Beaver County, State of Oklahoma ("*Chockley*"). The *Chockley* Plaintiffs (Anne Chockley, Johnita L. Foster and Dwayne Sager) are represented by the law firms of: Burns & Stowers, P.C. ("B&S"); Barker Woltz and Lawrence, APPC ("BWL"); and Trippet, Kee, Trippet & Parsons, P.L.L.C. ("TKTP"), collectively "*Chockley Counsel*."

2. The *Chockley* Plaintiffs have agreed to join in the above styled action ("*Cecil*") and agreed to resolve the claims asserted in *Chockley* as part of the settlement in *Cecil*. To facilitate this agreement, the *Chockley* Plaintiffs requested the *Chockley* case be

stayed pending a determination by this Court as to the fairness of the *Cecil* Settlement and Chockley Counsel entered appearances in *Cecil* on behalf of the Plaintiff (“Additional Class Counsel”).

3. Accordingly, I have entered my appearance in this action as additional counsel on behalf of Plaintiff, John Cecil.

4. The statements in this Declaration are based on my personal knowledge, the Court Clerk’s Docket Sheets in *Chockley* and the related Oklahoma Supreme Court cases, the contemporaneously maintained business records of BWL and my review of these records.

5. I submit this Declaration to demonstrate the qualifications of BWL to represent Plaintiff and the Settlement Class in this case and to provide the Court with the time and expenses that BWL has invested in the prosecution of *Chockley*, which have now inured to the benefit of *Cecil* and the Settlement Class (the “Litigation”).

6. *Chockley* was filed on October 4, 2002. Since that time, *Chockley* Counsel have successfully defended against several extreme efforts by BP to derail the case including:

- a. An unsuccessful effort by BP to transfer the action to the District Court of Pittsburg County; and
- b. Four (4) Original Jurisdiction actions filed by BP with the Oklahoma Supreme Court:
 - i. *BP vs. Bartheld*, Oklahoma Supreme Court Case No. 103,627 (2006) (*see BP vs. Bartheld*, 2006 OK 69);
 - ii. *BP v. Parsley*, Oklahoma Supreme Court Case No. 116,189 (2017);
 - iii. *BP v. Mills*, Oklahoma Supreme Court Case No. 116,203 (2017); and

iv. *BP v. Parsley*, Oklahoma Supreme Court Case No. 116,726 (2018).

7. *Chockley* Counsel engaged in a vigorous discovery effort and obtained substantial discovery from BP. *Chockley* Counsel had an expert build a damage model for the putative Class to be used for mediation purposes. *Chockley* Counsel then participated in an unsuccessful mediation effort in 2008; however, after that mediation effort, and as a direct result of the pending *Chockley* litigation, BP changed its royalty payment methodology and stopped taking deductions for gathering charges from its royalty owners beginning with November 2008 production. *Cecil's* expert, Dan Reineke, has estimated that BP's change in royalty payment methodology in 2009 has already benefited the Settlement Class by \$38,000,000 ("Past Benefits"), see Declaration of Daniel T. Reineke Valuation of Past and Future Benefits. *Chockley* Counsel also engaged in a vigorous pleadings practice, including defending numerous motions for partial summary judgment. At the time the *Cecil* Settlement Agreement was entered into, *Chockley* was scheduled for a hearing on the *Chockley* Plaintiffs' motion to certify the case as a statewide class action; that class certification hearing was scheduled to begin on October 15, 2018. *Chockley*, and the efforts of the *Chockley* Plaintiffs and *Chockley* Counsel, had a direct impact and influence on the creation of the *Cecil* common fund. The work of the *Chockley* Plaintiffs and *Chockley* Counsel has now inured to the benefit of *Cecil* and the Settlement Class.¹

¹ "Courts have consistently held that . . . counsel are entitled to seek a fee if there are multiple lawsuits (including, for example, competing class actions) with one crossing the finish line first and generating a common fund, counsel from the other lawsuits may seek a fee from the fund for their work in the collateral litigation." 5 *Newberg on Class Actions* § 15:60 (5th ed.).

8. I am an attorney for Plaintiff in the above-referenced case. I submit this Declaration regarding the qualifications of BWL to represent Plaintiff and the Settlement Class in this case and to provide the Court with the time and expenses that BWL has invested in the prosecution of the Litigation. The statements in this Declaration are based on my personal knowledge, the contemporaneously maintained business records of BWL, and my review of those records.

9. Attached hereto as **Exhibit 1** is the professional resume of BWL identifying its extensive experience in oil and gas class actions. BWL has been approved as class counsel in the following oil and gas class actions:

Rudman v. Texaco Inc., No. CJ-97-1E (District Court of Stephens County, Oklahoma) (certified as class Sept. 8, 1998)

Fazekas v. Atlantic Richfield Co., No. C-98-65 (District Court of Latimer County, Oklahoma) (certified as class Nov. 30, 2001)

The Marjorie Laverne McIntosh Trust v. Questar Exploration & Production Co., No. CJ-02-22, (District Court of Major County, Oklahoma) (certified as class Mar. 27, 2002)

Krug v. Helmerich & Payne, Inc., No. CJ-1998-6012 (District Court of Tulsa County, Oklahoma) (certified as class Sept. 25, 2003)

Velma-Alma Indep. Sch. Dist. No. 15 v. Chesapeake Energy Corp., No. CJ-2002-331-E (District Court of Stephens County, Oklahoma) (certified as class Jan. 23, 2004)

Velma-Alma Indep. Sch. Dist. No. 15 v. Texaco Inc., No. CJ-02-304 (District Court of Stephens Oklahoma) (certified as class Dec. 22, 2005)

Honnold v. Texaco Inc., No. CJ-2002-355 (District Court of Garvin County, Oklahoma) (certified as class Dec. 22, 2005)

Mahaffey v. Knox Bromide Sand Unit, No. CJ-04-581 (District Court of Stephens Oklahoma) (certified as class Dec. 22, 2005)

Taylor v. ChevronTexaco Corp., No. CJ-2002-104 (District Court of Texas County, Oklahoma) (certified as class Sept. 30, 2009)

Mahaffey v. Marathon Oil Co., No. CJ-04-581-E (District Court of Stephens County, Oklahoma) (certified as a class December 5, 2016)

10. To date, BWL has invested 3,828 hours in the prosecution of the Litigation and estimates it will expend another 40 hours in the future to fully implement the Settlement if finally approved.


11. To support the reasonableness of BWL fee request, it incorporates the analysis of the *Johnson* factors in the Joint Declaration of Plaintiff's Counsel in Support of Plaintiff's Application for Plaintiff's Attorneys' Fees, Litigation Expenses, Case Contribution Award, and Administration, Notice and Distribution Costs and the exhibits thereto ("Joint Declaration").

12. The books and records of BWL itemize the expenses BWL has paid in the Litigation that have now inured to the benefit of *Cecil* and the Settlement Class. It is the policy and practice of the BWL to prepare such records from expense vouchers, check records, credit card records, and other source materials. Based on my oversight of the work in connection with the Litigation and my review of these records, BWL has actually incurred over \$145,902.84 to prosecute the Litigation. All expenses shown were reasonable and necessary to the successful conclusion of the Litigation. The total expenses paid by BWL to date for which it seeks reimbursement from the Common Fund are \$145,902.84. BWL may present additional expenses incurred at the Final Fairness

Hearing.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 5, 2018.


Terry J. Barker

BARKER WOLTZ & LAWRENCE

2431 East 61st Street, Suite 200
Tulsa, Oklahoma 74136-1242
(918) 584-0506
(918) 584-0720 (facsimile)

Terry J. Barker

Oklahoma State University (B.S. 1984)

University of Tulsa (J.D. 1988)

Admitted to practice before the Oklahoma Supreme Court, the United States Supreme Court, the United States Courts of Appeals for the Fifth, Tenth and Federal Circuits, United States District Courts for the Northern, Eastern and Western Districts of Oklahoma, and the United States Court of Claims

Joseph C. Woltz

University of Oklahoma (B.A. 1985, M.A. 1987)

University of Tulsa (J.D. 1990)

Admitted to practice before the Oklahoma Supreme Court, the United States Courts of Appeals for the Fifth, Tenth and Federal Circuits, United States District Courts for the Northern, Eastern and Western Districts of Oklahoma, and the United States Court of Claims

Robert N. Lawrence

University of Oklahoma (B.A. 1993)

University of Texas (J.D. 1999)

Admitted to practice before the Oklahoma Supreme Court, the United States Court of Appeals for the Tenth Circuit, United States District Courts for the Northern, Eastern and Western Districts of Oklahoma, and the United States Tax Court

Robert K. Pezold (of counsel)

University of Virginia (B.S. 1967)

University of Tulsa (J.D. 1974)

Admitted to practice before the Oklahoma Supreme Court, the United States Courts of Appeals for the Tenth Circuit, and United States District Courts for the Northern, Eastern and Western Districts of Oklahoma

LEGAL EXPERIENCE IN OIL AND GAS MATTERS

The firm that is now Barker Woltz & Lawrence was founded in 1985 and has primarily represented clients in oil and gas matters since that time. All of its attorneys practice primarily in the area of oil and gas litigation.

Since 1997, the firm has represented oil and gas royalty owners in multiple class actions. The firm has been appointed as class counsel for royalty owners in the following class actions:

Rudman v. Texaco Inc., No. CJ-97-1E (District Court of Stephens County, Oklahoma) (certified as class Sept. 8, 1998)

Fazekas v. Atlantic Richfield Co., No. C-98-65 (District Court of Latimer County, Oklahoma) (certified as class Nov. 30, 2001)

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