

DONALD W. ABSHIRE, ET AL.

19TH JUDICIAL DISTRICT COURT

-versus-

CIV. ACTION NO. 377713, SEC. 26

THE STATE OF LOUISIANA, ET AL.

EAST BATON ROUGE PARISH,

CONSOLIDATED WITH

ARTHUR A. LEWIS, ET AL.

19TH JUDICIAL DISTRICT COURT

-versus-

CIV. ACTION NO. 412265, SEC. 26

THE STATE OF LOUISIANA, ET AL.

EAST BATON ROUGE PARISH

**APPLICATION OF PLAINTIFFS' CO-LEAD CLASS COUNSEL FOR AWARD OF LIMITED ATTORNEY'S FEES, AND FOR APPROVAL OF CERTAIN OUT-OF-POCKET COSTS AND EXPENSES AND INCENTIVE AWARDS FOR CLASS REPRESENTATIVES**

**I. INTRODUCTION AND SUMMARY OF RECOMMENDATIONS**

This is an application by Plaintiffs' Co-Lead Class Counsel, appointed by this Honorable Court by Order dated September 20, 2017, pursuant to their duties set out in that Order. This case presents an unusual situation: Only one of the class counsel of record in this case, Dan B. McKay, Jr., Esq., seeks any award of attorney's fees. The undersigned Co-Lead Class Counsel are not seeking any attorneys' fees for themselves, preferring to see as much as possible of the settlement proceeds go to the Class members.<sup>1</sup> The Court thus faces the challenge of carving out the professional contributions of one attorney—who performed a tiny fraction of the total work in the case—and determining whether a fee for him is appropriate, and if so, what the amount should be. Similarly, the undersigned Co-Lead Class Counsel face the challenge of making a recommendation with respect to Mr. McKay's fee request that is fair and reasonable to the Class.

Mr. McKay has formally requested that the undersigned Co-Lead Class Counsel apply for attorney's fees on his behalf in the sum of \$596,900.00, based on his reconstructed summary of time spent in the case. (Mr. McKay kept no contemporaneous time records.) As discussed in detail below, the undersigned counsel do not believe such a sum would be reasonable for Mr. McKay's contributions to the litigation, and believe it would be unfair to the Class. We do believe that Mr. McKay is entitled to receive a fee out of the common settlement fund—even a generous fee--and are prepared to make a recommendation to the Court based upon Mr.

<sup>1</sup> We do seek reimbursement of our unpaid out-of-pocket expenses and costs advanced for the prosecution of this case, such as filing fees, court reporter fees, deposition expenses, expert and other professional costs, claims administration, and the like, which will be separately addressed below.

McKay's reconstructed description of his activities and hours, our own knowledge of his role in the case, and our own review of the applicable factors from the Louisiana Supreme Court. As discussed below, we recommend and request that the Court award a fee of **\$104,230** to Mr. McKay as attorney's fees, which is twice the amount of money his portion of total hours devoted to the case could have earned him, if all counsel were indeed applying for a fee here. We further request and recommend that the Court award a combined total of **\$776,753** as reimbursement to all counsel for their unpaid out-of-pocket expenses necessary to the litigation. We also seek "incentive awards" for six Class Representatives, totaling **\$105,000**, all as further set out herein.

Thus, the total sought in this Fee and Expense Application is **\$984,014**. This represents just under 17% of the total settlement proceeds. Except for the remaining expenses of claims administration, which we estimate to be in the range of **\$85,000**, these would be the total deductions from the Class recovery for all attorneys' fees, costs of litigation, and expenses of claims administration.

## **II. FACTUAL BACKGROUND**

### **A. The Respective Roles and Efforts of Counsel in This Litigation**

The undersigned Co-Lead Class Counsel filed their comprehensive Petition on December 11, 1991, after months of study and analysis. Some three weeks later, on January 2, 1992, Mr. McKay filed a "tagalong" action for several new Plaintiffs, employing large portions of our Petition. Ultimately, the two cases were consolidated.

Before the class was certified (and going all the way back to consolidation of the case in 1992), Mr. McKay separately represented approximately 14.2% of the Plaintiffs in this matter (measured by the dollar value of claims). Co-Lead Class Counsel represented the remaining 85.8% of the Plaintiffs and consistently took the lead in the litigation.

#### **1. This Was a Massive Case, and Mr. McKay Performed Little of the Actual Litigation Work.**

From the beginning, this was a massive piece of complex business litigation, which required a sustained effort to maintain. The Defendants employed a "scorched earth" policy, which Co-Lead Counsel met virtually by themselves. By any measure, the undersigned Co-Lead Counsel's firms together performed the lion's share of all work done on the case. These two firms staffed the entire case with numerous attorneys and paralegals, some of whom at times

devoted nearly all their efforts to this case for weeks at a time, and the name partners in each firm spent thousands of hours of their own time as well.

This massive effort, and total commitment, was required in the face of the enormous resources employed by the State Defendants, and later the Insurance Defendants. At most hearings, the Defendants would have from 12 to 15 lawyers present, from firms such as Jones Walker; Sher Garner; Carlton Fields; Brook Morial; Everitt & Latham; Hailey McNamara; Blue Williams; Schafer & Schafer; and Dunlap Fiore. Each of these firms typically filed separate motions and exceptions, all of which had to be answered and dealt with. The Defendants designed this to be overwhelming to the Plaintiffs, even acknowledging in pleadings that this was a “war of attrition,” and observing that conversion of the case to a class action would be “unfair to the Defendants,” since they could drag out individual actions much longer, and the longer the case dragged on, the more individuals would die and thus many of the claims would cease to exist. The undersigned two Co-Lead Counsel firms determined not to be overwhelmed in the face of this mentality, and staffed up the case as necessary, for 28 years. The case could not have been successfully maintained without this. Mr. McKay was a solo practitioner with a busy practice on many other fronts, and never chose to hire additional staff so as to join this effort in a meaningful way.<sup>2</sup> At one point, we associated the law firms of Jerry McKernan, of Baton Rouge, and (for a brief period) Wendell Gauthier, of Metairie to assist in handling the work load. Mr. McKernan’s firm, especially, performed very substantial legal work on this case for over three years, and advanced a large amount in expenses until they had to resign due to a conflict upon receiving an appointment to represent the State in a large matter. Neither of those firms is seeking any fee in this matter.

## **2. The Firms’ Respective Efforts By Comparison of Hours**

The comparison of the firms’ respective hours reflects this lopsided commitment to the litigation by the two Co-Lead firms: Co-Lead Counsel contemporaneously recorded, on daily time sheets, a total of **43,605.75** hours (roughly 1,557 hours per year of the 28-year effort, approximately the annual hourly output of an entire attorney for each year of the litigation) versus Mr. McKay’s **1,737.5** hours (roughly 62 hours per year, or a little over five hours per month). Thus, based only on hours expended (and taking Mr. McKay’s recent re-construction of time as valid) Co-Lead Counsel performed approximately **96.1%** of all work on the Plaintiffs’

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<sup>2</sup> See McKay Hours dated March 12, 2019, Exhibit 3 to the Affidavit of John Gregory Odom, attached hereto as Exhibit B (asserting that Mr. McKay worked 1,346 hours, traveled for 166.5 hours, and used a paralegal for 225 hours in this case).

behalf, and Mr. McKay 3.9%. [This percentage for Mr. McKay is in fact certainly overstated, if all the hours worked by Mr. Odom were shown (some were lost; see his Affidavit), and if the hours of the McKernan and Gauthier firms had been included. The McKernan firm, in particular, enthusiastically took on a heavy load of responsibility, and that firm's hours during their three-plus years as co-counsel for the Plaintiffs very likely approximated those of Co-Lead Counsel for that period.]

### **3. The Firms' Respective Efforts By Comparison of Monetary Value of Hours**

Applying their respective customary hourly rates to these hours, the difference is even more stark: Mr. McKay, who practices in Bunkie, asserts a normal hourly rate of \$400 per hour and applies this to his summary of hours going back to 1991 (\$250/hour for his travel time, and \$75/hour for paralegal time), to arrive at a value of \$596,900 for legal work expended by himself and his secretary/paralegal.

In calculating what the total value of their fee would have been, the undersigned Co-Lead Counsel employed the hourly rates and methodology approved by numerous Courts in their class action practice, as recently as September of 2018.<sup>3</sup> Using these rates, the two Co-Lead Class Counsel law firms show a total value of \$21,122,779 in legal work expended by their combined firms.<sup>4</sup> Thus, Mr. McKay's firm represents only 2.8% of the total monetary value of legal services provided in this case (the so-called "Lodestar" amount). The undersigned firms' combined Lodestars represent 97.2% of the total value of legal work performed. Again, Mr. McKay's Lodestar amount would surely be even lower if all the attorney time were presented.

### **4. The Firms' Respective Financial Risks and Commitment to the Litigation As Measured by Their Financing of Costs and Expenses**

The financial commitment of advancing all the out-of-pocket cash costs necessary to run the case, including the payment of filing fees, court reporters, appellate costs, outside vendor copying costs, consultants and experts, and so on—quite apart from the financial commitment of providing the legal work—is also an important factor in considering the appropriateness of an award of fees and expenses. The relative commitment of Mr. McKay's firm to the total of unreimbursed out-of-pocket expenses was effectively zero. Mr. McKay has not made any request for reimbursement of out-of-pocket expenses, though the undersigned's own books do reflect that he made some minimal contribution over the years, totaling \$1,969, and he should be

<sup>3</sup> See *In re Lidoderm Antitrust Litigation*, 15-cv-01784, Dkt. No. 12, (N.D. Cal. filed Sept. 20, 2018).

<sup>4</sup> This figure represents \$8,350,592 from the Odom & Des Roches, LLC firm, and \$12,772,187 from the Smith Segura Raphael firm and its predecessors.

entitled to reimbursement of this sum.<sup>5</sup> By contrast, the Smith Segura firm recorded a total of unreimbursed costs of \$378,317 as of March 20, 2019, and the Odom & Des Roches firm of \$316,821, for a total of \$695,138 outstanding in unreimbursed costs and expenses borne entirely by those two Co-Lead Class Counsel firms, going back over 28 years. The firm of Jerry McKernan (now deceased), which acted as co-counsel in the case for over three years from 2001-2004, also advanced the sum of \$78,332. The firm of Wendell Gauthier (now deceased), at one time also co-counsel in the case, advanced the sum of \$1,314 as its share of certain third-party costs, as reflected on the books of Odom & Des Roches, LLC. All of these different firms' costs, including Mr. McKay's, will be reimbursed to them by the undersigned, if approved by the Court. The total amount of costs and expenses sought on behalf of all counsel who have unreimbursed outstanding costs, is \$776,753. See Affidavit of David P. Smith, attached as Exhibit A; and Affidavit of John G. Odom, attached as Exhibit B.

### III. LAW AND ARGUMENT CONCERNING MR. MCKAY'S ATTORNEY'S FEES

#### A. Customary Basis for Fee Award and Its Application Here

The award of attorney's fees in any class action case is not a foregone conclusion. The appropriateness of awarding a fee must be demonstrated to the Court's satisfaction. La. C.C.P. art. 595. See also, *In re Gas Water Heater Prod. Liab. Litig.*, 97-121 (La. App. 5 Cir. 6/30/97), *rev'd on other grounds by* 97-2028 (La. 4/14/98), 711 So. 2d 264, ("LSA-C.C.P. art 595 is discretionary; it does not require the court to award attorneys' fees, nor does it make attorneys' fees a statutory or legal element of damages in a class action when the underlying cause of action does not otherwise provide for attorneys' fees as a statutory element of damages.").

Once the Court is satisfied that some fee is justified, the mechanics of ascertaining a maximum theoretical fee are well-established. The customary basis for the award of attorneys fees in Louisiana class actions is the percentage of recovery method, as checked and verified by records of the attorney time actually spent. *White v. Gen. Motors Corp.*, 97-1028 (La. App. 1 Cir. 6/29/98), 718 So. 2d 480, 508-09 ("In determining a reasonable attorneys' fee, Louisiana courts, as well as numerous federal circuits, employ the "percentage of the fund" approach, as opposed to the "lodestar" approach.") (*citing, Bruno v. City of New Orleans*, 639 So.2d 1201 (La. App. 2d Cir.1994); *Pillow v. Board of Commissioners*, 425 So.2d 1267 (La .App. 2d

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<sup>5</sup> This includes a contribution of \$1,400 shown on the book of Odom & Des Roches LLC as well as a \$569.34 contribution shown on the books of Smith Segura & Raphael, LLP.

Cir.1982); *Alexander v. Lindsay*, 152 So.2d 261, 267 (La. App. 4th Cir.1963); *Ellis v. Georgia Pacific Corp.*, C.A. No. 26,574, 18th JDC.) See also *Orrill v. AIG, Inc.*, 2009-0888 (La. App. 4 Cir. 4/21/10), 38 So. 3d 457, 468, writ denied, 2010-0945 (La. 9/17/10), 45 So. 3d 1035, and writ denied, 2010-1117 (La. 9/17/10), 45 So. 3d 1036 (noting attorney fees of 14.62% of the recovery).

Here, the total recovery amount, from all settlements, is **\$5,810,000**. Accordingly, the next question is what percentage of that amount, if any, should be awarded as attorneys' fees.

**B. If All Counsel Were Applying for Attorneys' Fees, the Appropriate Percentage Here Would Be 23% of the Settlement Amount.**

In this case, all Plaintiffs having representation agreements with the two Co-Lead Counsel firms prior to class certification—85.2% of the class members, measured by the amount of claims—agreed to a contingency fee of 23%.<sup>6</sup> Mr. McKay has previously advised us, however, that his individual clients separately signed fee agreements with his law firm, agreeing to a 1/3 contingency fee.

Where class members have agreed to a certain percentage amount for attorneys' fees beforehand, that amount normally serves as the appropriate percentage to be awarded by the Court, and should in any event serve as the outer boundary of an acceptable fee. *In re Interstate Tr. & Banking Co.*, 235 La. 825, 844, 106 So. 2d 276, 283 (1958) presented a somewhat odd situation where attorneys brought suit on behalf of certain depositors, but the litigation evolved to benefit all depositors, with a fund being set up to benefit all depositors. It was never technically a class action. The attorneys sought fees that would be a percentage of the fund, *i.e.* the fund that was created for all depositors, not just their original clients. The Court allowed this, but recognized that the contracts with the original clients were relevant in several respects:

In fixing these fees on a quantum meruit basis, the trial judge should also take into consideration, but of course not be bound by, the terms of the contracts for compensation which these attorneys had with their original clients. ... [n. 1.] The attorneys here are seeking to recover their fees in quantum meruit from all the depositors, including their original clients. Of course they cannot be permitted to recover both in contract and in quantum meruit from their original clients; nor should the depositors they did not represent initially, under the facts of this case, be required to pay a greater percentage of the fund created than that which may be called for in the contracts of employment which these attorneys had with their original clients. See *Central Railroad & Banking Co. v. Pettus*, 113 U.S. 116, at page 128, 5 S.Ct. 387, 28 L.Ed. 915.

*Id.* at 282.

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<sup>6</sup> These same Plaintiffs also agreed, in the same agreements, to the conversion of the case to a class action if appropriate. See Affidavit of John Gregory Odom, Exhibit B hereto.

Since the vast majority of class members indicated long ago that they considered 23% to be a fair and reasonable contingency fee in this case, it is respectfully submitted that this is the percentage the Court should apply in the determination of fees in this case.

Thus, it is respectfully submitted that, if all counsel here were applying for attorneys' fees, the initial step would be to apply 23% to the total settlement amount of \$5,810,000, which yields a theoretical total attorneys fee, for payment to all attorneys in the case, of **\$1,336,300**.

**C. Mr. McKay should receive an attorney fee award that is proportional to his work in this case, and not a windfall due to the fact that Co-Lead Class Counsel have elected not to seek a fee.**

The award of all theoretically available attorneys' fees of **\$1,336,300** to Mr. McKay alone—or any substantial fraction of that amount, such as the \$596,900 he has asked us to recommend to the Court—would be wildly excessive and manifestly unfair to the Class, particularly given that he and his firm performed only 3.9% of the total hours of work in the case, contributed little to the substantive work in the case, and elected to participate in virtually none of the ongoing expenses, down to the present day.

Instead, the relevant analysis is whether awarding him an amount strictly proportional to the percentage his work bears to the total, theoretically allowable attorneys' fees (\$1,336,300) results in a reasonable and fair attorney's fee to Mr. McKay. A strict mathematical application of that formula (3.9% of \$1,336,300) results in a base fee for Mr. McKay of **\$52,115**. We argue below that the Court should deviate upward from this amount.

**D. *Covington vs. McNeese* Factors Support a Limited Award of Fees to Mr. McKay.**

The undersigned Co-Lead Counsel respectfully submit that to determine whether there should be an upward or downward departure from Mr. McKay's proportional fee amount, this Court should apply the *Covington vs. McNeese* factors to Mr. McKay's work. In *Covington v. McNeese State Univ.*, 2012-2182 (La. 5/7/13), 118 So. 3d 343, 349, our Supreme Court set out ten factors to be considered in ascertaining what constitutes a "reasonable fee." These factors are:

1. The amount of money involved;
2. The ultimate result obtained;
3. The responsibility incurred;
4. The intricacies of the facts involved;
5. The importance of the litigation;

6. The legal knowledge, attainment, and skill of the attorneys;
7. The diligence and skill of counsel;
8. The extent and character of work involved;
9. The number of appearances made; and
10. The Court's own knowledge.

If all counsel were seeking a fee in this case, it would be a straightforward matter to apply these factors in a favorable way to the efforts, knowledge, commitment, professional attainment, diligence, and skill of all counsel. It is less straightforward to apply these factors to the contributions of Mr. McKay alone. But Mr. McKay performed his work, in large part, as part of a team, and in fairness, his contribution should not be stripped out and considered in isolation, apart from its relationship to the work done by other lawyers. Applying the *Covington vs. McNeese* factors to the total effort of all class counsel, then, one finds briefly as follows:

1. **The Amount of Money Involved**

This case involved over 1,200 policyholders, noteholders, and debenture holders in an interrelated group of failed insurance companies known collectively as the Public Investors Group of companies. The face amount of claims lost by the group of Plaintiffs was over \$12 million, in 1991 dollars. With judicial interest, the total claims in this case exceeded \$30 million. By anyone's standards, a large amount of money was involved in the litigation. [This factor applies in favor of all Plaintiffs' counsel, including Mr. McKay.].

2. **The Ultimate Result Obtained**

After numerous efforts at mediation and settlement, stretching over many years, the parties finally agreed to settle for the sum of \$5,810,000, or roughly 45% of the value of their original losses. This was a very good result for the Plaintiffs, given all the circumstances, including the circumstance that, even if they had won 100% of their claims at trial, formidable hurdles remained in getting a judgment paid by the State. On the other hand, it is appalling that the case stretched out so long that many of the Plaintiffs, elderly to begin with, have since died and never lived to see any justice in this matter. The litigation was extremely hard fought, and would have continued to be bitterly contested through trial. The case was extremely complex and there was considerable possibility of jury confusion. Undersigned counsel submit that taking all factors into consideration, the ultimate result obtained in settlement was good, but not superb;



it was a fair, reasonable, and appropriate conclusion to the litigation. [This ultimate result applies to all counsel, including Mr. McKay.]

### **3. The Responsibility Incurred**

The responsibilities incurred by the undersigned Co-Lead Counsel and their law firms were enormous. They put aside other highly-profitable work to faithfully serve the interests of their clients. They spent thousands of hours of their own time on the case, and hired associates and paralegals to devote high percentages of their time to it. At times, their tiny law firms were nearly overwhelmed by the army of aggressive attorneys employed by the State. They also incurred, paid, and bore for 28 years, without interest, hundreds of thousands of dollars in ongoing costs necessary in order to finance the litigation. [This factor applies only in small part to Mr. McKay, as he bore virtually none of the ongoing expenses (\$1,969 out of \$776,753) and incurred responsibility for only a very tiny portion of the work commitment (3.9% of the hours recorded).]

### **4. The Intricacies of the Facts Involved**

The facts involved in this case were among the most complex and convoluted. A highly sophisticated scheme to benefit the Louisiana State Insurance Guaranty Association was merged with the illegal schemes of the corporate executives of these PICO entities to enrich themselves at the expense of their policyholders and noteholders. Many of these executives--and the Louisiana Commissioner of Insurance--went to the federal penitentiary. Layer upon layer of documentation hid the scheme, and had to be pierced by analysis of counsel. A high level of accounting experience was necessary to understand the schemes, and knowledge of both insurance and banking regulations was necessary to spot the improprieties of the State Defendant actors. As in most white collar criminal enterprises, crucial steps in the scheme were not written down, but had to be deduced from surrounding documentation and circumstances. Facts in business litigation rarely get any more intricate than these.

[This factor applies equally to all counsel, including Mr. McKay.]

### **5. The Importance of the Litigation**

This factor, while vague, would appear to be satisfied by the importance of rooting out public corruption being employed by the State of Louisiana against its own citizens so that it had to be stopped. Its public importance is also underscored by the comprehensive investigation, indictment, and trial of many of the principal actors in the conspiracy, by the United States

Attorney for the Eastern District of Louisiana. Further, then-Governor Roemer appointed an Inspector General to investigate this massive fraud. His report, unknown to the undersigned, was coincidentally issued on December 11, 1991--the same date as our own filing of the Petition. The Inspector General arrived at many of the same conclusions as the undersigned alleged in their Petition, and cited much of the same evidence.

[This factor applies equally to all counsel, including Mr. McKay.]

#### 6. The Legal Knowledge, Skill, and Attainment of the Attorneys

As shown by the law firms resumes' attached to the Affidavits of John Gregory Odom and David P. Smith, the lawyers of Odom & Des Roches LLC and Smith Segura Raphael, LLP have extensive experience in complex business litigation of this type, going back over forty years.<sup>7</sup> They also have extensive experience in complex class action litigation in the business area, and have lectured and written law review articles in the field of business fraud. The observations of The Honorable Nancy Edmunds, United States District Judge for the Eastern District of Michigan, in awarding attorney's fees to class counsel (including both undersigned firms) in *In re Cardizem CD Antitrust Litigation*, 99-md-1278, MDL No. 1278, Order 49 (E.D. Mich. Nov. 26, 2002) reflect similar comments by numerous other courts around the United States over a period of many years:

First, as discussed above, the result Class Counsel obtained on behalf of the Class is extraordinary. Second, there is no question that Class Counsel spent thousands of hours litigating this complex case over the past four years. Their work at all times has been of the highest quality.

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Furthermore, this Court would be remiss if it failed to acknowledge the experience, hard work, and skill demonstrated by Class Counsel in this matter. Their excellent performance on behalf of the Class in this hotly contested case justifies the award they seek. The Court is appreciative of the professionalism, skill, and competency displayed by counsel for both sides throughout this litigation. Professor Eric Green, the mediator in this matter, likewise observed that the skill and professionalism of counsel for the Defendants and the Plaintiff Class during the mediation was of the highest caliber.

Finally, this Court considers society's stake in rewarding attorneys who produce such benefits in order to maintain an incentive to others. As already noted, Class Counsel obtained an excellent settlement for the Class in a complex and hard-fought case. "Society's stake in rewarding attorneys who can produce such benefits in complex litigation such as in the case at bar counsels in favor of a generous fee . . ." *F & M Distributors*, 1999 U.S. Dist. LEXIS 11090 at \*18. Society also benefits from the prosecution and settlement of private antitrust litigation. See e.g., *Pillsbury Co.*, 459 U.S. at 262-63; *Minnesota Mining & Mfg. Co.*, 381 U.S. at 318. Class Counsel brought this private antitrust action seeking to enforce the antitrust laws and alleging that a brand-name drug manufacturer had colluded with a generic competitor to block cheaper generic versions of the brand-

<sup>7</sup> See Resume Smith Segura & Raphael, LLP, attached as Exhibit A to the Affidavit of Affidavit of David P. Smith, attached hereto as Exhibit A, and Resume of Odom & Des Roches LLC, attached as Exhibit 1 to the Affidavit of John G. Odom, attached hereto as Exhibit B.

name drug from coming to market. This case has helped put prescription drug pricing and marketing tactics at the forefront of media, Congressional scrutiny, and judicial scrutiny. Encouraging qualified counsel to bring inherently difficult and risky but beneficial class actions like this case benefits society.

Mr. McKay's practice and experience have been more varied. He is a sole practitioner, and his website describes his as "one of the last general practice firms in existence in Louisiana." His website further specifies that Mr. McKay is an Assistant District Attorney, has been a Public Defender, and has experience in criminal defense, bankruptcy, workers' compensation, Social Security disability claims, serious injury and wrongful death, as well as major civil litigation.<sup>8</sup> As a result, he has considerably less "legal knowledge, skill, and attainment" in the subject matter and procedural complexities that were involved in this litigation.

**7-9. The Diligence and Skill of Counsel; the Extent and Character of Work Involved; and the Number of Appearances Made**

These three categories would seem to blend together in this case, and to some extent have already been addressed. There can be no doubt of the diligence of Co-Lead Class counsel or the enormous extent of the work they have performed; the appearances made by these attorneys, before six different District Court Judges, the First Circuit Court of Appeal (four different appearances and arguments), the United States District Court for the Western District of Louisiana (case improperly removed by Defendants), the United States District Court for the Eastern District of Louisiana, the United States Court of Appeals for the Fifth Circuit, the Supreme Court of Louisiana, and the Supreme Court of the United States, have been numerous, fully prepared, and almost every time, victorious. The Defendants collectively filed over thirty different writ applications to the First Circuit, all of which were denied, and the same number to the Louisiana Supreme Court, all of which were denied. By any measure, the work involved was difficult, non-routine, time-consuming, intense, and required considerable research and expertise.

[This factor does not apply equally to Mr. McKay, whose diligence and commitment to the case were more limited, as previously described.]

**10. The Court's Own Knowledge**

Due to the recent assignment of this case to this Honorable Court, this final factor would not appear to be of significance here.

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<sup>8</sup> See McKay Website, Exhibit 2 to Exhibit B, the Affidavit of John G. Odom.

**E. Ascertaining an Appropriate Fee for Mr. McKay in These Circumstances**

Balancing all factors here, including our own personal knowledge of what work was performed and who performed it, we have concluded that a fee of **\$104,230** is appropriate for Mr. McKay. The following is our methodology and reasoning: By applying the actual percentage of hours performed by Mr. McKay (3.9% of the total recorded hours) to the total theoretical contingency fee in this case (\$1,336,300) one arrives at a **base sum of \$52,115** for Mr. McKay.<sup>9</sup>

Having arrived at this base sum of \$52,115 for Mr. McKay's contribution to the case, we respectfully recommend the Court consider the totality of circumstances here, and double that amount, for a final fee to Mr. McKay of **\$104,230**.

Our reasons for making this recommendation are several. First, this amount still represents to the Class a small percentage of the total theoretical attorneys' fee award which might have been made in this case if all counsel had elected to apply for a fee. The Class had every reason to expect that as much as \$1,336,300 might be deducted from any gross settlement amount as attorneys' fees, and the award of the recommended amount to Mr. McKay still gives the Class a substantial benefit from the undersigned counsels' decision not to apply for fees.

Secondly, Mr. McKay did perform some valuable work in the case. He maintained communications with his original clients, handled all written discovery requests specifically associated with those particular clients, defended certain of their depositions, attended many hearings in the case (though actually argued none that the undersigned can recall), participated in many conference calls, attended and contributed to the several mediation sessions, extensively reviewed documents in Baton Rouge in the Defendants' possession in the "RICO Room" at our request, drafted portions of certain briefs assigned to him, and provided friendly moral support to Co-Lead Counsel for many years. Overall, he cooperated with Co-Lead Counsel's vision for the case and supported their decisions and strategy against the Defendants.

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<sup>9</sup> Actually, this is a generous starting point for Mr. McKay--using the percentage of his hours to the total recorded hours, rather than choosing the dollar value of his contribution as a percentage of the total-- which would yield a much lower amount. To illustrate, if all counsel were indeed seeking a fee, and if the Court did in fact award \$1,336,300 to be divided appropriately by Co-Lead Counsel, we would normally start our process by arriving at Mr. McKay's percentage of the "Lodestar" dollar value of his services, which in this case would only be 2.8% of the total. Applying this percentage to the total settlement award of \$1,336,300 would give a base fee of **\$37,817** for Mr. McKay instead of the **\$52,115** figure we have elected to use. We would then consider all other relevant factors, including input from Mr. McKay himself, to ascertain whether a "plus" or a "minus" factor should be applied to that base fee, before allocating a portion of the fee to him. This is the way every class action fee has been computed for every participating lawyer, in all the class action cases where we have been involved. The undersigned have elected to use the percentage of Mr. McKay's hours, rather than the more "real world" Lodestar figures, to eliminate any consideration of the differences in the firms' various hourly rates and to provide an uncontroversial apples-to-apples comparison.

Mr. McKay should also get credit for what he did not do: At least until this Fee Application stage, he was not disruptive, did not cause logistical or other difficulties, and did not try to open a separate negotiating front with the Defendants, but instead honored the united front suggested by Co-Lead Counsel, even when he might personally have preferred a different approach. We are also informed that certain of the Defendants' counsel covertly approached Mr. McKay on more than one occasion, attempting to convince him to part company with the undersigned and even urging him to join them in accusing the undersigned of having a conflict of interest at one point, which he declined to do. None of Mr. McKay's clients opted out of the litigation, and it might have wrecked the entire Class settlement if even one of them had done so. Mr. McKay maintained discipline within the ranks of his own personal clients, and deserves credit for having done so. Certainly, Mr. McKay was a team player for the Plaintiff Class, and deserves to be compensated.

As mentioned above, given that the undersigned have elected to forego any attorneys' fee, there is considerable flexibility available to the Court which might not normally be present. This flexibility is a factor in the undersigned's conclusion that it would not be unfair to the Class for Mr. McKay to be awarded a two-times multiple of the fee amount to which he might normally be entitled. This sum, though certainly generous to Mr. McKay, is not unfair to the Class, since it represents only some 8% of the attorney's fees which might normally have been expected to be deducted from the settlement proceeds. Likewise, this sum is not an excessive windfall to Mr. McKay, since, although undoubtedly large, it is still only a fraction of the \$596,900 sum which he claims as the value of his hours.<sup>10</sup>

#### **IV. REIMBURSEMENT FOR OUT-OF-POCKET COSTS AND EXPENSES**

The undersigned Co-Lead Counsel firms seek the reimbursement of unreimbursed out-of-pocket costs, advanced on the Plaintiff Class's behalf by all lawyers in the case, in the aggregate sum of \$776,753.

We are providing descriptions of these expenditures in the Affidavits of counsel attesting that these costs were indeed necessary to the prosecution of the claims herein, were advanced exclusively on behalf of the Class, and remain unreimbursed. The vast majority of these unreimbursed costs and expenses were actually paid out-of-pocket by the undersigned to third-party vendors; a much smaller number of them were incurred as in-house costs for copies,

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<sup>10</sup> Although of interest mainly as a mathematical curiosity, this 8% figure falls almost precisely at the midpoint between the percentage of total clients Mr. McKay originally represented (14.2%) and the dollar value of his work as a percentage of the total value of work performed (2.8%).

postage, telephone long distance and computer research charges (back in the days when such things were separately charged). In the case of these in-house charges, they were computed in the same way and at the same rates charged to all the clients of our respective firms, and no surcharges or “premiums” were added to them, as verified by the Affidavits.

The following are the major categories of expenses for which reimbursement is sought:

1. Filing fees;
2. Transcript Costs;
3. Court Reporter Costs;
4. Other Court Costs, Including Service of Process;
5. In-House Postage, fax, and Long Distance Costs;
6. Travel Expenses (for depositions and hearings);
7. Courier Costs, such as Fed-Ex and UPS;
8. Copy Costs Paid to Outside Vendors;
9. In-house Copy Costs;
10. Claims Administration Costs (Rust Consulting);
11. Fees Paid to Outside Professionals; and
12. Fees Paid to Expert Witnesses.

A word of explanation is appropriate for the last three categories. Since this case became, in large measure, a “negligent failure to regulate” case against the State, it was necessary to locate and retain regulatory experts who could study the case, testify as to the standard of care, and whether it was breached here. Our principal regulatory expert was James Schacht, former Illinois Director of Insurance and National Director of Insurance Regulatory Practice at PricewaterhouseCoopers LLP, who has worked in insurance regulation since 1964. Another was Lewis Melahn, of Missouri, who was Commissioner of Insurance for Missouri from 1989-93.

It was also necessary to establish damages and to analyze the voluminous and highly complex business records of the underlying entities and the numbers provided by the State Defendants. We retained Harold Asher, noted CPA and forensic accountant from New Orleans, for these purposes. He provided essential assistance to us for many years, not only in building a damages model, but in analyzing the State’s assertions and providing us with detailed questions to ask in discovery, as to categories of other documents.

We also hired outside legal consultants in two instances and seek reimbursement of fees paid to them in this Application. First, in 2001, the State Defendants sought to disqualify the undersigned counsel on ethical grounds, alleging a conflict of interest. They noticed a contradictory hearing and brought Professor Geoffrey Hazard, Yale Law School Professor and author of a widely-used textbook on Legal Ethics, to the hearing in Baton Rouge as their expert witness. We had retained Paul Hebert, Esq. of Lafayette, who is a noted authority on Louisiana Legal Ethics, and Mr. Hebert testified on our behalf at the hearing. The Court elected to give credence to Mr. Hebert's testimony over Prof. Hazard's, and the State's Motion for Disqualification was denied. We also consulted with Mr. Hebert confidentially on other ethical issues which arose during the course of the litigation. Mr. Hebert billed our two firms directly, on an hourly basis, and was promptly paid. We seek reimbursement of his fees in this application.

We also retained the expert legal services of David Cook, Esq. of Lafayette. Mr. Cook was retained in 2006, some 15 years into the life of this case, shortly after we elected to sue the numerous insurance companies providing different layers of coverage to the State Defendants during the years in question. Mr. Cook has considerable expertise in complex insurance matters, and he undertook to read and coordinate all the numerous insurance policies and to advise us on the layers of coverage involved per Defendant, per year, per dollar amount of exposure. He produced a color-coded chart which was so accurate that even the Insurance Defendants' own lawyers copied and referred to it during the litigation. He also drew on his extensive experience to give us strategic and tactical advice in this area of the case. Mr. Cook is also a trained and certified mediator, and provided invaluable assistance in getting the case resolved.

Mr. Cook was not counsel to the Class per se; he did not sign pleadings or serve as Class Counsel of record, or counsel of record to any individual Plaintiffs before conversion to a class action; rather, his role was that of expert consultant and advisor.<sup>11</sup> As a courtesy to the undersigned law firms, Mr. Cook agreed to defer payment of his fee until the end of the case, so that the undersigned did not have to come up with even more expenses out of pocket to finance the case. As compensation, Mr. Cook agreed to accept one-quarter of whatever fee the Smith Segura firm might ultimately be awarded. If the Smith, Segura and Raphael firm were indeed applying for attorney's fees, their portion of the total fees might have been approximately

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<sup>11</sup> In that role, he made at least 18 trips at our request to mediations, hearings, arguments, and meetings, and assisted in every way we asked him to.

\$785,000 (58.7% of the total amount theoretically available to attorneys). Mr. Cook's agreed-upon portion of that might have been approximately \$196,000--if Smith, Segura, and Raphael had elected to seek a fee and had been awarded one. Mr. Cook agreed to round his fee down to \$150,000 in light of the Smith, Segura firm deciding to seek no fees at all. This \$150,000 fee was recently paid by both undersigned Co-Lead Counsel firms, after it became clear that the legislative committee had indeed approved the settlement. It is included in the total reimbursement of costs sought in the case.

Finally, the undersigned respectfully point out that the claims administration process is ongoing, and that fees from the Claims Administrator (Rust Consulting) and CPA will undoubtedly continue to accumulate as claims are received, decisions made, and payments made to all Class members. The unpaid expenses sought herein are those which exist as of the date of this Application. The undersigned Co-Lead Class Counsel will continue to advance the costs necessary to complete the claims administration process, and will apply to the Court for approval of these final expenses in the Motion for Approval of the Final Plan of Distribution at the end of this process.

#### **V. INCENTIVE AWARDS TO CLASS REPRESENTATIVES**

We seek incentive awards to the named Class Representatives as follows:

- Robert Sparks: \$25,000
- Jimmie Nell Lewis: \$25,000
- Robert Wagner: \$25,000
- Patricia DeWitt: \$10,000
- Sylvia Lemoine: \$10,000
- Narcelle LaCombe: \$10,000

As set forth in the Affidavit of John Gregory Odom, these awards are clearly deserved and appropriate. All of these representatives served with distinction and without complaint, and sacrificed freely of their personal time for the good of the entire Class. The first three named above were original members of the Board of the Pico-Midwest Action Group, elected by their fellow Plaintiffs and entrusted with powers of attorney from every Plaintiff represented by the Smith and Odom firms. These modest awards are clearly deserved and we respectfully request that the Court approve them.

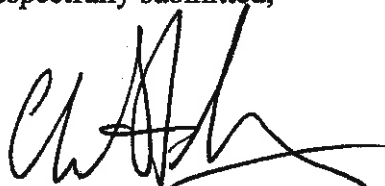


## VI. CONCLUSION

For the foregoing reasons, it is respectfully prayed that the Court approve an award of **\$104,230** to Dan B. McKay, Jr., Esq. as his attorney's fee in this matter, and that the Court approve payment of **\$776,753** as reimbursement of unpaid necessary costs advanced by all counsel on behalf of the Class in this matter. We also pray for approval of incentive awards in the total amount of **\$105,000** to six Class Representatives in appreciation for their service in this litigation.

Respectfully submitted,

By:

  
\_\_\_\_\_  
JOHN GREGORY ODOM (#1109)

Email: [Jodom@odrlaw.com](mailto:Jodom@odrlaw.com)

CHRISTOPHER T. STOW-SERGE (#34779) ✓

**ODOM & DES ROCHES, LLC**

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MITTIE J. BOLTON (#32523)

**SMITH, SEGURA & RAPHAEL, LLP**

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*Co-Lead Class Counsel*

**CERTIFICATE OF SERVICE**

Undersigned counsel here by certifies that a copy of the above and foregoing has been served on all parties of record via U.S. Mail, email, or hand delivery on this 21st day of March, 2017.



Christopher T. Stow-Serge

**DONALD W. ABSHIRE, ET AL**

**19<sup>TH</sup> JUDICIAL DISTRICT COURT**

**-versus-**

**CIV. ACTION NO. 377713, SEC. 26**

**THE STATE OF LOUISIANA, ET AL**

**EAST BATON ROUGE PARISH**

**CONSOLIDATED WITH**

**ARTHUR A. LEWIS, ET AL**

**19<sup>TH</sup> JUDICIAL DISTRICT COURT**

**-versus-**

**CIV. ACTION NO. 412265, SEC. 26**

**THE STATE OF LOUISIANA, ET AL**

**EAST BATON ROUGE PARISH**

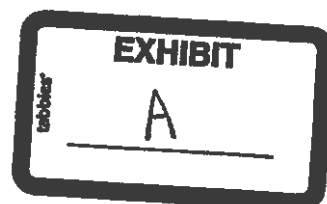
**AFFIDAVIT OF DAVID P. SMITH ON BEHALF OF SMITH, SEGURA & RAPHAEL,  
LLP IN SUPPORT OF PLAINTIFFS' APPLICATION FOR  
REIMBURSEMENT OF EXPENSES**

I, David P. Smith, declare as follows:

1. I am the senior partner of the law firm Smith, Segura, and Raphael, LLP. My firm focuses primarily on prosecution of complex class actions. My law practice has been focused on complex business litigation for the majority of my career. I have been co-counsel in numerous antitrust class actions throughout the United States for many years, resulting in collective recoveries of some two billion dollars on behalf of clients. My firm resume is attached hereto as Exhibit A. I submit this Affidavit in support of Class Plaintiffs' application for an award of attorney's fees and reimbursement of expenses in connection with services rendered in prosecuting this action.

2. My firm, together with the firm Odom & Des Roches, LLC, are Co-Lead Class Counsel in the above-captioned litigation. We were appointed to this position by this Honorable Court's Order dated September 20, 2017.

3. Beginning in approximately March of 1991, Greg Odom and I began investigating the facts surrounding the collapse of the Public Investors Companies. As a result of this investigation, we filed a detailed petition on behalf of several hundred named Plaintiffs on December 11, 1991 in the 9<sup>th</sup> JDC in Rapides Parish, which subsequently was transferred to the 19<sup>th</sup> JDC. We have continued as co-counsel since then, litigating this case for almost 28 years.



4. The total number of contemporaneously-recorded attorney and staff hours expended on this litigation by my firm, and its predecessors, from inception of this case through January 31, 2019 is 31,013.20. The total fees incurred by my firm based on that hour total is \$12,772,187.40. I am not seeking a Court award for a fee for my firm. In calculating what the total value of our fee would have been, I employed the hourly rates and methodology approved by numerous Courts in our class action practice, as recently as September of 2018. Given the extensive time records on this almost 28-year case, I have provided a summary of my firm's attorney and staff hours, with corresponding total fee amounts, categorized by major events in the case for the convenience of the Court, attached hereto as Exhibit B. The summary is provided in lieu of a computer printout of detailed time entries, given that a printed version of time and expenses would be approximately 2,500 pages. If the Court desires, we will furnish a disk or USB drive of our detailed time and expenses. In any event, we will have our time and expenses on computer at the final fairness hearing.

5. Our firm also has incurred a total of \$378,317.83 in unreimbursed expenses in connection with the prosecution of this litigation. We are requesting that this Honorable Court award my firm's total expense in the amount of \$378,317.83. These were kept by computer file in the normal course of business, with the actual cost recorded. A summary of those expenses, from inception of the case through March 1, 2019, is attached hereto as Exhibit C. All of these expenses were necessary and appropriate for the prosecution of this case on behalf of the Plaintiffs and Plaintiff Class. My firm created a depository as described in Exhibit C. The depository was maintained at my firm's office and its storage facility over the 28-year course of this complex litigation. No expense for my office's rent, storage fees or overhead is included in the expense total except for photocopy expenses incurred over this 28-year period. Also, we have omitted payment for contract labor from our total amount of actual expenses.

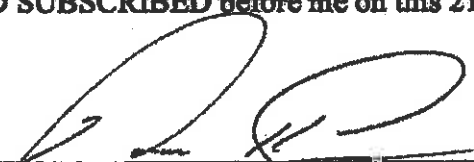
6. In my firm's expense reports is shown a credit for \$569.34 paid to the firm by Dan B. McKay, Esq., as one-third of the fee for the mediation conducted by Thomas Juneau on July 25, 2017. It was shown as a deduction from expenses on our books and is not included in the above expense total of \$378,317.83. It should, in my opinion, be reimbursed to Mr. McKay.

7. I also hereby endorse and attest to the accuracy, to the best of my knowledge, of the Affidavit submitted by John Gregory Odom, dated March 21, 2019.

Dated: March 21, 2019

  
\_\_\_\_\_  
David P. Smith (Bar No. 12159)

SWORN TO AND SUBSCRIBED before me on this 21<sup>st</sup> day of March, 2019.

  
\_\_\_\_\_  
NOTARY PUBLIC

BRIAN K. THOMPSON  
LOUISIANA BAR ROLL NO. 25502  
MY COMMISSION EXPIRES WITH LIFE

# SMITH SEGURA & RAPHAEL, LLP

A LAW FIRM INCLUDING A LIMITED LIABILITY COMPANY

DAVID P. SMITH, LLC\*  
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## FIRM RESUME

February 2019

Smith Segura & Raphael, LLP, is a law firm headquartered in Alexandria, Louisiana. The firm's principal area of practice is class action antitrust litigation. The clients of the firm include local businesses, national and international companies, and private individuals.

The firm's attorneys have been extensively involved in numerous complex multi-party lawsuits, including *In Re: Brand Name Prescription Drugs Antitrust Litigation*, MDL 996 (N.D. Ill.); complex and diverse class actions such as *Northwest Airlines, Inc., et al., Antitrust Litigation* (S.D. Mich.); *Cardizem Antitrust Litigation*, MDL 1278 (S.D. Mich.); *Hytrin Antitrust Litigation*, MDL 1317 (S.D. Fla.); *Cipro Antitrust Litigation*, MDL 1382 (E.D.N.Y.); *Bupirone Antitrust Litigation*, MDL 1410 (D.D.C.); *K-Dur Antitrust Litigation*, MDL 1419 (D.N.J.); *In Re: Relafen Antitrust Litigation*, 01-cv-12239 (D. Mass.); *Neurontin Antitrust Litigation*, MDL 1479 (D.N.J.); *Remeron Antitrust Litigation*, 03-cv-0085 (D.N.J.); *Independent Drug Co. v. Biovail Corporation, et al (Adalat CC Antitrust Litigation)* (D.D.C.); *In re: OxyContin Antitrust Litigation*, MDL 04-md-1603 (S.D. N.Y.); *Louisiana Wholesale Drug Company, Inc, et a. v. Biovail Corporation et al (Tiazac Antitrust Litigation)* (D.D.C.); *Louisiana Wholesale Drug Company, Inc. v. Abbott Laboratories, et al (TriCor Antitrust Litigation)*, 05-cv-340 (D. Del.); *In re: Hypodermic Products Antitrust Litigation*, MDL No. 1730 (D.N.J.); *Louisiana Wholesale Drug Company, Inc. v. Ferring B.V., et al (DDAVP Antitrust Litigation)* (S.D.N.Y.); *Natchitoches Parish Hospital Service District v. Tyco International, LTD, et al (Pulse Oximeter Antitrust Litigation)* (C.D. Cal.); *Natchitoches Parish Hospital Service District v. Tyco International, LTD, et al (Sharps Containers Antitrust Litigation)*, 05-cv-12024 (D. Mass.); *Louisiana Wholesale Drug Company, Inc. v. Warner Chilcott Limited Company, et al (Ovcon 35 Antitrust Litigation)* (D.D.C.); *King Drug Company of Florence, Inc. v. Cephalon, Inc., et al (Modafinil Antitrust Litigation)*, 06-cv-1797 (E.D. Pa.); *William Rosenstein & Sons, et al v. Eastern Mushroom Marketing Cooperative, Inc., et al (Mushrooms Antitrust Litigation)*, 06-cv-620 (E.D. Pa.); *Texas Grain Storage, Inc., et al v. Monsanto Company*, 07-cv-0673 (W.D. Tex.); *In re: Nexium Antitrust Litigation*, MDL 12-md-2409 (D.Mass.); *Rochester Drug Co-Operative, Inc., et al v. Braintree Laboratories, Inc. (Miralax Antitrust Litigation)* (D. Del.); *Delaware Valley Surgical Supply Co., Inc., et al v. Ethicon, Inc. et al (Endosurgical Antitrust Litigation)*, 05-cv-8809 (C.D. Cal.); *Louisiana Wholesale Drug Co., Inc. v. Sanofi Aventis, et al (Arava Antitrust Litigation)* (S.D.N.Y.); *Meijer, Inc., et al v. Abbott Laboratories, et al (Norvir Antitrust Litigation)*, 07-cv-5985 (N.D. Cal.); *Dik Drug Co., et al v. Altana Pharma Ag, et al (Protonix Antitrust Litigation)* (D.N.J.); *Meijer, Inc., et al v. Unimed Pharmaceuticals, Inc. et al (Androgel Antitrust Litigation)* (N.D. Ga.); *In re: Prograf Antitrust Litigation*, 11-cv-2242 (D. Mass.); *Burlington Drug Company, Inc., et al v. Pfizer, Inc., et al (In re Lipitor Antitrust Litigation)*, 12-cv-2389 (D.N.J.); *Louisiana Wholesale Drug Company, Inc., et al v. SmithKline Beecham, et al (Lamictal Antitrust Litigation)*, 12-cv-0995 (D.N.J.); *Louisiana Wholesale Drug Company, Inc. v. Shire LLC, and Shire U.S., Inc. (Adderall XR Antitrust Litigation)*, 12-cv-3711 (S.D.N.Y.); *In re: Niaspan Antitrust*

EXHIBIT

A

*Litigation*, MDL 13-md-2460 (E.D. Pa.); *In re: Suboxone Antitrust Litigation*, MDL 13-md-2445 (E.D. Pa.); *In re: Aggrenox Antitrust Litigation*, MDL 14-md-2516 (D.Conn.); *In re: Lidoderm Antitrust Litigation*, MDL 14-md-2521 (N.D. Ca.); *In re: In re: Opana ER Antitrust Litigation*, MDL-2580 (N.D. IL); *In re Namenda Antitrust Litigation*, 15-cv-7488 (S.D.N.Y.); *In re Asacol Antitrust Litigation*, 1:15-cv-12730 (D. Mass.); *Drogueria Betances, LLC, et al v. Novartis Pharmaceuticals Corporation, et al (Exforge Antitrust Litigation)*, 1:18-cv-04361 (S.D.N.Y.); *Value Drug Company, et al v. Abbvie, Inc., et al (AndroGel Antitrust Litigation)*, 2:18-cv-02804 (E.D. Pa)

## **PARTNERS OF THE FIRM**

**DAVID P. SMITH, LLC**, born in Lecompte, Louisiana; admitted to bar, 1968, Tennessee; 1971, Louisiana; U.S. Court of Military Appeals and U.S. Tax Court; 1974, U.S. Supreme Court. Education: Louisiana State University and A. and M. College (B.A., 1964); University of Tennessee at Knoxville (J.D., 1967). Capt., JAGC, USMCR, 1968-1971. Tax Attorney, Office of the Chief Counsel, Internal Revenue Service, 1971-1976. Member: Louisiana State and American Bar Associations. Committees: Louisiana Bar Association Committees, including service on the Multi-Jurisdictional Practice Committee. Areas of Practice: Diverse state and federal litigation, including complex multi-party litigation, as well as commercial and business torts.  
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**SUSAN C. SEGURA**, born in Loreauville, Louisiana; admitted to bar, 1993, Louisiana; also admitted to practice before U.S. Court of Appeals Fifth Circuit, U.S. District Court, Eastern and Western Districts of Louisiana. Education: University of Southwestern Louisiana (B.S., Suma Cum laude, 1987), Louisiana State University (J.D., 1993). Member: Alexandria, Louisiana State and American Bar Associations; Louisiana Association of Defense Counsel. Areas of Practice: Diverse state and federal litigation, including complex multi-party and/or class action litigation and commercial litigation.  
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**DAVID C. RAPHAEL, JR.**, born in New Orleans, Louisiana; admitted to bar, 1994, Louisiana; also admitted to practice U.S. Supreme Court, U.S. Court of Appeals Third Circuit, U.S. Court of Appeals Fifth Circuit, U.S. Court of Appeals Federal Circuit, U.S. District Court, Eastern, Middle and Western Districts of Louisiana. Education: Louisiana State University (B.S., 1989, J.D., 1993). Member: Louisiana State and American Bar Associations. Areas of Practice: Diverse state and federal litigation, including complex multi-party and/or class action litigation, as well as business transactions; commercial and business torts; successions and estate planning.  
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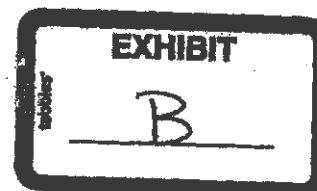
**PICO Litigation In re Abshire v State of Louisiana**

**SMITH SEGURA & RAPHAEL, LLP**

**Time Report**

**Period of Inception thru January 31, 2019**

<b>Category</b>	<b>Hours</b>	<b>Totals</b>
Case development & drafting of initial petitions	3,185.70	\$1,382,888.00
Motion practice & discovery (non-class-related)	9,404.90	\$2,973,419.50
First removal to Federal Court	537.40	\$122,684.00
W.D.La. Injunction suit	3,372.00	\$1,124,172.50
Second removal to First Circuit	860.40	\$413,104.80
Class certification: discovery & motion practice	6,329.10	\$2,804,162.60
First appeal on class motion	2,060.30	\$1,063,693.00
Second appeal on class motion	3,760.60	\$2,042,768.00
Mediation, settlement, settlement approval process	1,502.80	\$845,295.00
<b>Total:</b>	<b>31,013.20</b>	<b>\$12,772,187.40</b>



PICO Litigation In re Abshire v State of Louisiana

SMITH SEGURA & RAPHAEL, LLP

Expense Report

Period of Inception thru March 1, 2019

Description		Amount
Telephone/Teleconference/Facsimile/Long Distance	\$	41,361.57
Photocopies - *Including photocopies for depository	\$	55,375.50
Photocopies - Outside	\$	6,793.04
Postage/Express Mail /Messengers	\$	10,166.36
Outside Database/Document Management	\$	27,566.25
Travel/Hotel/Meals	\$	27,034.55
Claims Administration/Professional Services/Expert Services	\$	159,994.28
Witness Fees/Court Cost/Filing Fees	\$	50,026.28
<b>Total Expenses</b>	<b>\$</b>	<b>378,317.83</b>

\*SSR created a depository for all documents obtained through investigations and discovery and for client information and instruments. The depository was maintained over the course of the case at SSR's office and storage facility.



**DONALD W. ABSHIRE, ET AL. 19TH JUDICIAL DISTRICT COURT**

**-versus-**

**CIV. ACTION NO. 377713, SEC. 26**

**THE STATE OF LOUISIANA, ET AL. EAST BATON ROUGE PARISH,**

**CONSOLIDATED WITH**

**ARTHUR A. LEWIS, ET AL.**

**19TH JUDICIAL DISTRICT COURT**

**-versus-**

**CIV. ACTION NO. 412265, SEC. 26**

**THE STATE OF LOUISIANA, ET AL. EAST BATON ROUGE PARISH**

**AFFIDAVIT OF JOHN GREGORY ODOM**

Personally appeared before the undersigned Notary and witnesses, duly authorized by law to administer oaths, **JOHN GREGORY ODOM**, who, being duly sworn, deposed and said as follows:

1. I am a member of the Bar of the States of Louisiana and Georgia, having been admitted to the Bar of Georgia in 1978 and to the Bar of Louisiana in 1983. I am the senior member of the law firm Odom & Des Roches, LLC, with offices in New Orleans and in Hahira, Georgia. My law practice has been focused on complex business litigation for my entire career. I have been co-counsel in numerous antitrust class actions throughout the United States for many years, resulting in collective recoveries of some two billion dollars on behalf of clients. I have been rated "AV" by Martindale-Hubbell for over thirty years. A current Resume of my firm is attached hereto as Exhibit 1.

2. My firm and I, together with the firm Smith, Segura, and Raphael of Alexandria, Louisiana, are Co-Lead Class Counsel in the case of *Abshire vs. the State of Louisiana, et al.*, C.A. No. 377713 c/w 412265 (La. 19<sup>th</sup> J.D.C.), presently pending in the 19th Judicial District Court, Baton Rouge, Louisiana. We were appointed to this position by this Honorable Court's Order dated September 20, 2017. This Affidavit is submitted in support of our "Application of Plaintiffs' Co-Lead Class Counsel for Award of Limited Attorney's Fees and for Approval of Certain Out-of-Pocket Costs and Expenses, and Incentive Awards for Class Representatives" (hereinafter "Fee and Expense Application"), filed this date. I was a principal author of this Application, and hereby confirm that the facts stated therein are true and correct to the best of my knowledge and belief.

3. In approximately March of 1991, David Smith and I, then with predecessors to our present law firms, became aware of the underlying facts surrounding the losses of the Plaintiffs in this matter, and began an intensive investigation into the facts. This investigation culminated in our filing a detailed Petition on behalf of several hundred aggrieved Plaintiffs, in the 9th Judicial Court, Rapides Parish, Louisiana, on December 11, 1991. This was subsequently transferred to the 19th JDC. We have been co-counsel in the case ever since that time.

4. Dan B. McKay, Esq., of Bunkie, Louisiana, filed a similar action on behalf of several additional aggrieved Plaintiffs, on January 2, 1992. This action was subsequently consolidated with our action on Mr. McKay's motion. Based on the stated value of the claims, the clients represented by Mr. McKay represented approximately 14.2% of the total claims, and those represented by the firms of Mr. Smith and myself represented the remaining 85.8%. Since that consolidation, Mr. Smith and I, and our firms, have worked together with Mr. McKay as a team, with the common goal of achieving a fair recovery for our respective clients. I am personally familiar with the contributions made by Mr. McKay and his firm to the common effort, as well as with the contributions made by my own firm and Mr. Smith's firm, and other firms such as the McKernan and Gauthier law firms. I have attached the first three pages of Mr. McKay's law firm website hereto as Exhibit 2, as further description of his experience and practice.

5. I am personally familiar with the facts asserted in the Fee and Expense Application regarding Mr. McKay's activities in this litigation, as well as those asserted with respect to the activities, expenses, and efforts of the other law firms. I am also familiar with the experience, skill, and expertise of the two Co-Lead Class Counsel law firms, as stated in the Fee and Expense Application. The facts asserted therein are true and correct to the best of my knowledge and belief.

6. Odom & Des Roches, LLC, and predecessor firms, recorded hours spent on this litigation contemporaneously on daily time sheets, which were converted to computer printouts known internally as "WIPs" (Work-in-Progress Reports). I have personally reviewed these WIP reports for this litigation, and the total hours recorded for legal work through 1/31/19 were 12,592.55 hours. I am aware that this total is understated by a considerable amount, since all of my time on this file for the year 1991 was lost in the transition from a previous firm in which I was a member. Furthermore, I personally stopped keeping time on this case several years ago, once Mr. Smith and I determined that we would not be seeking any attorneys' fees in the event

of a recovery, so the true number of hours worked by my firm would also include a considerable amount of time from those recent years, which I have made no effort to reconstruct. Therefore, this total of 12,592.55 hours is conservative, and the true number, if known, would be higher. Aside from that qualification, the total of hours is true and correct to the best of my knowledge and belief. (The firm's entire WIP reports will be made available to the Court upon request.) Further, applying my firms' normal hourly rates to the respective attorneys' and paralegals' time that are represented in that total, the monetary value of that time is \$8,350,592.50. These hourly rates, and this methodology of determining our fee as class counsel, have been approved numerous times by Courts around the U.S., most recently in September, 2018. *See In re Lidoderm Antitrust Litigation*, 15-cv-01784, Dkt. No. 12, (N.D. Cal. filed Sept. 20, 2018).

7. I have also examined our firm's records of unreimbursed costs and expenses advanced on behalf of the Plaintiffs in this litigation. These were kept by computer file, just as all our other client matters are kept in the normal course of business, and the actual cost was recorded, with no "premium," surcharge, or other hidden charge to the client. The total for charges incurred internally at the firm, on postage, long distance, fax, and in-house copy charges, was \$52,396.98. The total for charges paid to outside vendors for court costs, copy charges, professional services, experts, claims administration, court reporting, depositions, transcript/appeal charges, and reimbursement of our own staff for travel expenses incurred, was \$264,424.19. I have verified that these totals do not contain any payment for "contract" lawyers or paralegals hired to perform this firm's own legal work, and again, no surcharges of any kind have been applied to these actual costs. Thus the total reimbursement requested for costs and expenses advanced by Odom & Des Roches, LLC is \$316,821.17. All of these expenses were necessary and appropriate for the prosecution of this case on behalf of the Plaintiffs. (The complete expense ledger can be made available to the Court upon request.)

8. In our firm's expense reports is shown a credit for \$1,400 paid to the firm by Dan B. McKay, Esq., with the date of 11/03/06 and the notation, "Dan B. McKay, Jr. Re: Schacht Expert Fees Through 08/31/06." This is the only such payment by Mr. McKay that I found in our records. It was shown as a deduction on our books (that is, since the \$1,400 was received and deposited by us, it is not being charged by us in the above total number). It should, in my opinion, be reimbursed to Mr. McKay and we therefore are including this number in the total requested for the Court's approval.

9. Similarly, in our firm's expense reports is shown a credit for a total of \$1,314.54 for payments received, in two installments, from the Wendell Gauthier law firm. That firm served as additional Plaintiffs' counsel for a brief period in 2003. These two payments are shown as a deduction on our books and are not included in our firm's figures requested for approval by the Court, and therefore this sum should be reimbursed to the Gauthier firm and is included in the total requested for the Court's approval.

10. The law firm of the late Jerry McKernan was also counsel for the Plaintiffs for over three years, before the firm withdrew to accept a new referral of a matter on behalf of the State. During their tenure as co-counsel, they assumed considerable responsibility for work in the case, and also assumed considerable responsibility for payment of ongoing expenses. I contacted the McKernan firm and requested that they provide us with their expense ledger, which they have done. I have reviewed this ledger and confirmed that all of the expenses listed were reasonable and were necessary to the prosecution of this litigation, to the best of my knowledge and belief. Their expenses do not contain any request for reimbursement of contract lawyers or paralegals to assist in their own legal responsibilities. The McKernan firm's expenses come to a total of \$78,332.21. We are requesting this sum in our Application on their behalf. (The McKernan firm's complete expense ledger can be made available to the Court upon request.)

11. I have also known and worked with Dan B. McKay, Esq. as co-counsel representing the Plaintiffs in this litigation, since early 1992. On March 13, 2019, following up on previous discussions and draft Statements, Mr. McKay transmitted to me and to David Smith a final "Statement of Professional Services for Purposes of Class Action Fee Award." Mr. McKay advised us that he had kept no contemporaneous time records, but that this 80-page document was an ex post facto reconstruction of his time spent on the matter since 1991, accomplished by going back through his files, including correspondence and pleadings. I have reviewed these descriptions in detail, and in my opinion they are a fair and accurate representation of his activities in the litigation. Mr. McKay represents that his firm spent a total of 1,737.5 hours working on the case, and he further represents that his normal hourly rate is \$400 per hour (\$250/hour for travel time, and \$75/hour for secretary/paralegal time), for a total value of his time of \$596,900. Mr. McKay has made a formal request that we apply for attorney's fees for his firm in this amount. The final page of Mr. McKay's Statement of Professional Services is attached to this Affidavit as Exhibit 3.

12. Based on my own personal knowledge of Mr. McKay's contributions to the work in the case, my knowledge of the much more significant contributions of others, my review of all the time records, and my consideration of the factors set forth by the Louisiana Supreme Court, it is my opinion that Mr. McKay's request for an award of \$596,600 is unreasonable and that such an award would be unfair to the Class. In my opinion, Mr. McKay should be entitled to a maximum of \$104,230 as attorney's fees in this matter.

13. All of the clients represented by David Smith's firm and my firm in this litigation signed Fee Agreements which contained an agreement that the attorneys would be compensated by receiving a contingency fee of 23% of any proceeds received by settlement, trial, or other recovery. All of these clients likewise agreed, at the outset, that the matter could be converted to a class action if counsel believed it to be in order. Mr. McKay has advised us that his own personal clients also signed a contingency fee agreement, but for 1/3 of the recovery.

14. Finally, we are seeking an "incentive award" to the named Class Representatives as follows: To Robert Sparks, Jimmie Nell Lewis, and Robert Wagner, the sum of \$25,000 each. To Patricia DeWitt, Sylvia Lemoine, and Narcelle LaCombe, \$10,000 each. I am personally familiar with the extensive efforts these Plaintiffs have made on behalf of all the Plaintiffs in this litigation. Their devotion to the case has been intense and their personal sacrifices have been considerable, selfless, and without any expressed hope of any recompense for their efforts. Their value to the case, and their assistance to the attorneys, were enormous and provided a benefit common to all Class members. It is my opinion that their efforts fully deserve the modest awards sought.

FURTHER, DEPONENT SAITH NOT.

J. G. Odom  
JOHN GREGORY ODOM

Sworn to and subscribed before me, Notary, and the below two witnesses, this 21st day of March, 2019.

WITNESSETH:

Lovie D Pittman

Debra T. Powell  
Shiley Sean



**ODOM & DES ROCHES, LLC  
SUITE 2020, POYDRAS CENTER  
650 POYDRAS STREET  
NEW ORLEANS, LOUISIANA 70130  
TEL. (504) 522-0077  
FAX (504) 522-0078**

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**Firm Resume**

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Odom & Des Roches, LLC, engages in multi-party litigation of complex civil matters throughout the United States. The firm's clients include local businesses, national and international companies, and private individuals.

The lawyers of Odom & Des Roches, LLC, have particular depth of experience in antitrust litigation, corporate litigation, and pharmaceutical industry litigation. The firm routinely handles complex class action cases and other matters both inside and outside the Multi-District Litigation context. The firm's partners have served as lead trial counsel in several national antitrust class cases that have gone to trial in various federal courts around the country.

The firm has been intimately involved in, among others, the following national antitrust class action and non-class action cases:

- *In re AndroGel Antitrust Litig.*, Civil Action No. 09-md-2084, N.D. Ga. (district court appointment to executive committee for Sherman Act Class Plaintiffs) (case pending).
- *In re Brand Name Prescription Drugs Antitrust Litig.*, Civil Action No. 94-C-897, E.D.N.Y. (representation of 3,800 non-class independent retail pharmacy operations) (private settlements reached with many defendants).
- *In re Buspirone Antitrust Litig.*, MDL Docket No. 1410, S.D.N.Y. (district court appointment to steering committee representing Sherman Act Class Plaintiffs) (district court-approved settlement of \$220,000,000).
- *In re Cardizem CD Antitrust Litig.*, MDL Docket No. 1278, E.D. Mich. (district court appointment to discovery committee representing Sherman Act Class Plaintiffs) (district court-approved settlement of \$110,000,000).
- *In re Hypodermic Direct Purchaser Antitrust Litig.*, Civil Action No. 05-1602, D.N.J. (district court appointment to executive committee representing Sherman Act Class Plaintiffs) (district court-approved settlement of \$45,000,000).
- *In re K-Dur Antitrust Litig.*, MDL Docket No. 1419, D.N.J. (district court appointment to executive committee representing Sherman Act Class Plaintiffs) (case pending).
- *In re Lamictal Direct Purchaser Antitrust Litig.*, Civil Action No. 2:12-cv-00995 D.N.J. (counsel for Sherman Act Class Plaintiffs) (case pending).
- *In re Lidoderm Antitrust Litigation*, Civil Action No. 3:15-cv-01784, N.D. Cal.

**EXHIBIT**

**B-1**



(counsel for Sherman Act Class Plaintiffs) (district court-approved settlement of \$166,000,000).

- *In re Neurontin Antitrust Litig.*, MDL Docket No. 1479, D.N.J. (counsel for Sherman Act Class Plaintiffs) (district court-approved settlement of \$190,000,000).
- *In re Nexium (Esomeprazole) Antitrust Litig.*, Civil Action No.1:12-md-02409, D. Mass. (counsel for Sherman Act Class Plaintiffs) (case pending).
- *In re Relafen Antitrust Litig.*, Master File No. 01-12239, D. Mass. (counsel for Sherman Act Class Plaintiffs) (district court-approved settlement of \$175,000,000).
- *In re Remeron Antitrust Litig.*, Civil Action No. 03-CV-0085, D.N.J. (counsel for Sherman Act Class Plaintiffs) (district court-approved settlement of \$75,000,000).
- *In re: Suboxone (Buprenorphine Hydrochloride and Nalaxone) Antitrust Litig.*, MDL No. 2445, E.D. Pa. (counsel for Sherman Act Class Plaintiffs) (case pending).
- *In re Terazosin Hydrochloride Antitrust Litig.*, MDL Docket No. 1317, S.D. Fla. (counsel for Sherman Act Class Plaintiffs) (district court-approved settlement of \$72,500,000).
- *In re TriCor Direct Purchaser Antitrust Litig.*, Civil Action No. 05-340, D. Del. (district court appointment to plaintiffs' executive committee representing Sherman Act Class Plaintiffs; served as lead trial counsel) (district court-approved settlement of \$250,000,000).
- *King Drug of Florence, Inc., et al. v. Cephalon, Inc., et al.*, Civil Action No. 2:06-cv-01797, E.D. Pa. (district court appointment to executive committee for Sherman Act Class Plaintiffs) (district court- approved settlement of \$512,000,000; case pending against remaining defendants).
- *Meijer, Inc. et al. v. Abbott Laboratories*, Civil Action No. 4:07-cv-05985, N.D. Cal. (counsel for Sherman Act Class Plaintiffs) (district court-approved settlement of \$52,000,000).
- *Natchitoches Parish Hospital Service District, et al. v. Tyco International (US), et al.*, Civil Action No. 05-12024, D. Mass. (counsel for Sherman Act Class Plaintiffs; served as lead trial counsel) (district court-approved settlement of \$32,500,000).

The core of the firm's philosophy and practice is its commitment and ability to try jury cases, and its lawyers structure their strategy from the outset of an engagement with an eye towards eventual appearances in the courtroom for motion practice and jury trials. It is the firm's philosophy and experience that being prepared for the rigors of motion practice and trial maximizes the opportunities for the client to obtain favorable results. In addition to its active jury trial practice, the firm has extensive appellate experience, and its senior partner argued and won the unanimous reversal of a federal circuit court of appeals before the United States Supreme Court. Odom & Des Roches, LLC, which is rated "AV" by Martindale-Hubbell, maintains offices in New Orleans, Louisiana and Hahira, Georgia. The firm is listed in Martindale-Hubbell's "Bar Register of Preeminent Lawyers".

#### PARTNERS

**John Gregory Odom, PLC.** Mr. Odom was born in Hahira, Lowndes County, Georgia on November 29, 1951, and was admitted to the bar of the State of Georgia in 1978, the District of Columbia in 1982, and the State of Louisiana in 1983. He is also admitted to the bars of numerous United States District Courts and Courts of Appeals throughout the country, as well as the United

States Supreme Court. He practiced with a leading Savannah firm for several years, and was a business litigation partner in the second-largest firm in Louisiana for seven years before leaving to form his own firm in 1990.

Mr. Odom was educated at Yale University (B.A., cum laude, 1973); The Queen's College, Oxford University (B.A. (hons.), 1975; M.A., 1981); and the University of Virginia School of Law (J.D., 1978). He is the author of "Recent Developments in Litigation Under the Racketeer Influenced and Corrupt Organizations Act and Federal Securities Law," Manual of Recent Developments in the Law, Louisiana State Bar Association, 1987-1990, and "Creative Applications of Civil RICO," 11 Am. J. Trial Adv. 245, Fall, 1987. His regular areas of practice include corporate litigation; healthcare industry litigation; securities litigation; RICO litigation; professional liability litigation; class action litigation; and antitrust litigation.

**Stuart E. Des Roches, LLC.** Mr. Des Roches was born in New Orleans, Louisiana on August 12, 1966, and was admitted to the bar for the State of Louisiana in 1992. He has practiced continuously with Mr. Odom since 1992 and was made a partner in the firm in 1998. He is admitted to practice in numerous United States District Courts and Courts of Appeals throughout the country, as well as the United States Supreme Court. Mr. Des Roches was educated at the University of New Orleans (B.A., 1989), and Tulane University School of Law (J.D., 1992), and is a member of the New Orleans, Louisiana, and American Bar Associations, and the United States Supreme Court Historical Society.

Mr. Des Roches has routinely practiced antitrust law for the more than twenty years, and has particular experience in antitrust litigation relating to the Hatch-Waxman Act, the pharmaceutical industry, and medical devices. Mr. Des Roches served as the lead trial lawyer for the class of direct purchasers in *In re Tricor Direct Purchaser Antitrust Litigation* (D. Del.), which resulted in the largest settlement at that time of a Hatch-Waxman antitrust case (\$250,000,000) after commencement of trial. He also served as co-lead trial counsel with the firm's partner Mr. Kelly in *Natchitoches Parish Hospital Service District, et al. v. Tyco Healthcare, et al.* (D. Mass.), which settled for \$32,500,000 after three weeks of trial and on the eve of closing arguments. He has also been involved in various other litigation matters, including numerous trials, in the areas of general business and accountant's liability defense.

**Andrew W. Kelly.** Mr. Kelly was born in Bellefonte, Pennsylvania on December 6, 1966, and was admitted to the bar for the States of California and Louisiana in 1994. He is admitted to practice in the United States District Courts for the Eastern, Middle, and Western Districts of Louisiana, and the Southern District of California; and the United States Court of Appeals for the Fifth Circuit. Mr. Kelly was educated at the University of California at Berkeley (B.A., 1988), and the University of San Diego School of Law (J.D., 1994). He served as law clerk to the Honorable John Minor Wisdom, of the United States Court of Appeals for the Fifth Circuit. His regular areas of practice include business litigation; class action litigation; and antitrust litigation. Along with Mr. Des Roches, Mr. Kelly served as co-lead trial counsel for the class of direct purchasers in *Natchitoches Parish Hospital Service District, et al. v. Tyco Healthcare, et al.* (\$32,500,000 settlement three weeks into trial). He is also available for counseling on criminal defense matters.

**Chris Letter.** Mr. Letter was born in Philadelphia, Pennsylvania on August 30, 1974. He earned a J.D. from Loyola University of New Orleans School of Law in 2007 and received a Bachelor of Arts degree in history from the University of New Orleans in 1998. Mr. Letter is admitted to practice in the Louisiana Supreme Court and the several courts of the State of Louisiana. He is also admitted to practice in the United States District Courts in Louisiana, and the Fifth Circuit Court of Appeals. He actively participates in the firm's antitrust litigation practice.

#### ASSOCIATES

**Annie M. Schmidt.** Ms. Schmidt was born in New Orleans, Louisiana on May 11, 1985. She earned a J.D. from Loyola University School of Law in 2010, and received a Bachelor of Arts degree from Spring Hill College in 2007. Ms. Schmidt is admitted to practice before the Louisiana Supreme Court and the several courts of the State of Louisiana. She actively

participates in the firm's antitrust litigation practice.

**Dan Chiorean.** Mr. Chiorean was born in Oradea, Romania in April 1980, and emigrated to the United States at the age of 11. He holds a Bachelor of Science in Industrial and Operations Engineering from The University of Michigan, where he was recognized on the Dean's List and University Honors List. Mr. Chiorean earned his *Juris Doctor* in May, 2012 from Tulane Law School, where he served on Moot Court Board. He joined Odom & Des Roches as an Associate in March, 2014 and is admitted to practice before the Louisiana Supreme Court and the several courts of the State of Louisiana, the United States District Court for the Eastern District of Louisiana, and the United States District Court for the Northern District of Georgia. Mr. Chiorean is a member of the Louisiana State Bar Association, the New Orleans Bar Association, and the Federal Bar Association.

**Christopher T. Stow-Serge.** Mr. Stow-Serge was born in Fort Lauderdale, Florida in February of 1985. He earned a Bachelor of Arts degree from Tulane University in 2007 and a J.D. from Tulane Law School in 2012, where he graduated *magna cum laude*. Following law school, Mr. Stow-Serge served as a judicial law clerk to the Honorable Fredericka Homberg Wicker at the Louisiana Fifth Circuit Court of Appeal. Mr. Stow-Serge is admitted to practice law in the state courts of Louisiana as well as the U.S. District Court for the Eastern District of Louisiana, the U.S. District Court for the Western District of Louisiana, and the U.S. Fifth Circuit Court of Appeals. He actively participates in the firm's antitrust litigation practice.

#### OF COUNSEL

**Thomas Maas.** Mr. Maas concentrates his practice on complex litigation, antitrust, and intellectual property disputes, and he has broad litigation experience in antitrust, patent, trademark, trade secrets, securities fraud, and other complex commercial cases. He has developed particular experience in the pharmaceutical industry, including antitrust, patent/Hatch-Waxman, and contract litigation, as well as counseling in licensing and M&A transactions. Mr. Maas is highly knowledgeable on the intricacies of Food and Drug Administration (FDA) approval, exclusivity periods under Hatch-Waxman, and the antitrust implications of settlements in pharmaceutical patent litigation. Mr. Maas has represented clients in multiple billion dollar jury trials in the pharmaceutical industry, as well as in a billion dollar merger. He has also co-authored multiple successful appellate briefs before various federal appellate courts, and he is a former licensed pharmacy technician. Mr. Maas also counsels clients in the alcoholic beverage industry on a wide variety of subject matter areas, including trademark disputes and licensing, regulatory issues, financing and restructuring, and distribution and promotional agreements. He acts as lead outside counsel for a popular distilled spirits brand, and he was selected to the Executive Committee for the Distilled Spirits Council of the United States (DISCUS), the country's leading trade organization in the distilled spirits industry. Mr. Maas joined Odom & Des Roches in 2017 as Of Counsel, after ten years of practice with Katten Muchin Rosenman in Chicago.

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## LOUISIANA LAW CONSULTATIONS



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Welcome to the McKay Law Office - A General Practice local law firm offering consultations in Louisiana Law to those who need basic information. We are one of the last general practice firms in existence in Louisiana and we serve the local population in Central Louisiana, primarily the area encompassing Alexandria, Marksville and Bunkie, Rapides and Avoyelles Parishes.

Thank you for visiting the McKay Law Office online. Our primary mission is two fold. We still offer general law office services to our clientele in Louisiana, including major civil litigation, serious injury and wrongful death, bankruptcy law (debtors' counsel) and criminal defense. Our firm has extensive experience with over 30 years in these areas. Dan McKay, lead attorney, has 35 years experience as a general practice attorney. During that time he also served - in addition to his law practice - as a Public Defender for over 14 years, 5 years as chief defender in the local (county) office, and over 11 years as an Assistant District Attorney. All of these years have included work in civil and criminal court, state and federal, and in juvenile and bankruptcy courts. His experience also includes experience in other "specialized" courts,

such as workers' compensation, Social Security disability claims, and work in areas of public relations (dealing with the press). Mr. McKay is one of a dying breed of lawyers who can talk to you in a wide variety of legal subjects.

### A WORD TO THOSE OUTSIDE OF LOUISIANA WHO HAVE QUESTIONS ABOUT LOUISIANA LAW

The second arm of the McKay Law Office is to provide consultations in Louisiana law to out of state (or out of area) individuals who have questions about legal matters connected to Louisiana that are, or may be, governed by Louisiana law. We will provide this service free to out of state residents by telephone or email for a limited time (watch the space) in order to determine whether or not to commence these consultations. In limited cases, we may be able to take your case, but in any event we will in most cases be able to "point you in the right direction".

### News

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EXHIBIT  
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B-2

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### About Us

Dan B. McKay, Jr. is a graduate of the Paul M. Hebert Law Center at Louisiana State University (LSU). He graduated in May 1980 and was licensed to practice law in Louisiana in October 1980. He has licensed to practice before all state and federal courts in Louisiana, the Fifth (5<sup>th</sup>) Circuit Court of Appeals, and the United States Supreme Court. Mr. McKay is a United States Army veteran of the Viet Nam war with one year of combat service and three years active duty, including a year in an AF Artillery battery stationed in Germany. He went on to serve 4 more years in the active reserve, rising to the rank of Captain, and was commanding officer of his unit in Bayou Rouge, LA, while in law school. He is a past president and current board member of the Louisiana City Attorney's Association, a past board member of the Louisiana Public Defenders Association and ADA member of the Louisiana District Attorneys Assn. He is a member of the Bunkie Rotary Club (Paul Harris Fellow #1) and has served as club president twice, the second time being in 2010-11. He is a member of the First Baptist Church, Bunkie (ability and dependability are trademarks of Mr. McKay and his family). He and his wife have been married for 27 years and have three children, all of whom are LSU graduates, two with advanced degrees. His son is an Eagle Scout and an executive with the Walker Automotive Group, Alexandria, LA.

Mr. McKay has 35 years of continuous and uninterrupted experience in law practice and has never had a malpractice claim or bar association complaint brought against him. He has owned and managed his own firm since Jan. 2, 1984. He grew up on a farm in north Louisiana where his father, a WWII veteran (and 20-month POW) was a career Clerk of Court and farmer. Mr. McKay's entire life, from childhood, has included hunting, fishing, farming, playing youth baseball and high school football. His first job was church janitor while in high school. He has never stopped working, serving his community, and serving the needs of average citizens in his lengthy law practice. He was instrumental in forming the parish-wide Acadian Parish Little League in the mid-1980s, and coached 13-15 year-old boys for 8 years. He holds a variety of church responsibilities, including insurance committee chairman, substitute Sunday School teacher, and legal adviser. Mr. McKay's life is entirely made up of work, service to his country, service to the community and its people, and loving father and grandfather to his ever-growing family.

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### Contact

The McKay Law Office is located at 404 Walnut St, Bunkie, LA 71322 - across from the CLECO office (major mid-South utility co) and two doors down from the Sabine State Bank.

TELEPHONE: (318) 346 2336 / 24 hr. voicemail

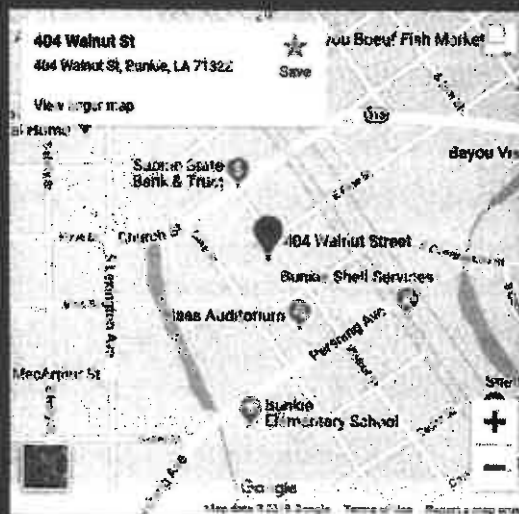
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**IMPORTANT:** There are fancy sounding "lawyer sites" on the internet, with explanations of various legal questions. These are written by good lawyers who know what they are talking about, but who speak like they are writing for a lawbook or a legal encyclopedia. When we talk to you, whether in writing or by telephone, we will direct our answers at your questions in plain language you can understand. You can also interrupt us or <mailto:danmckay@outlook.com> for clarification. **THIS IS THE DIFFERENCE BETWEEN US AND THE "BIBLIOTHECARY ZOOM" SITES.**

Consultation email: [danmckay@outlook.com](mailto:danmckay@outlook.com) - for your requests for email or telephone consults. **SEE THE DISCLAIMER BELOW.**

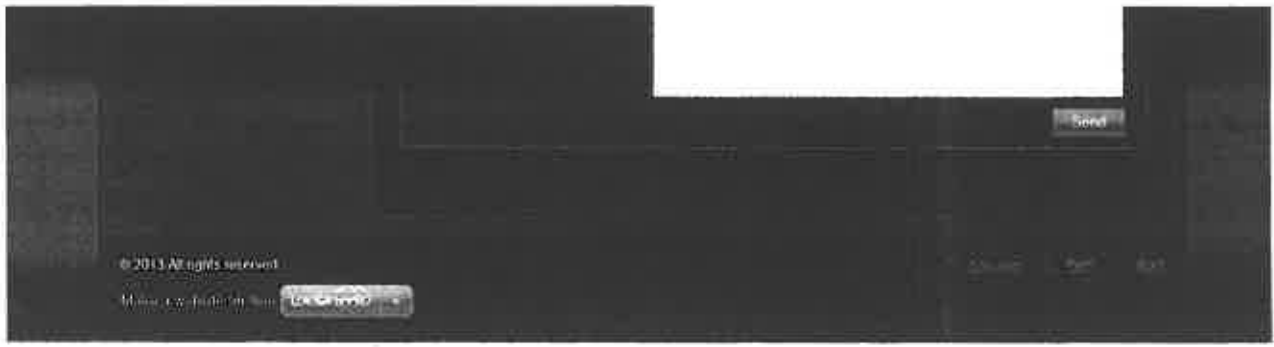
Office email: [danmckay@outlook.com](mailto:danmckay@outlook.com) - It won't be a bad idea to email both addresses.

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of Civil Procedure Article 591(B)(4) and for the Approval of Form and Manner of Notice to the Settlement Class, filed on behalf of Plaintiffs and Defendants, The State of Louisiana through the Office of Financial Institutions, The Department of Insurance, and the Office of Risk Mgt. was withdrawn. The Court vacated the Scheduling Order and Jury Trial date previously set for 11/5/18. Travel time:

3

6/8/18 Research updating law on effect of Bankruptcy Trustee's suit against parties causing loss to debtor (PI, Inc.); case, In The Matter Of: SEVEN SEAS PETROLEUM, INC., Debtor vs. Chesapeake Energy Corp. (5<sup>th</sup> Cir. 2008) 522 F.3d 575, and other cases. 4

6/25-28/18 DBMJr. completes his portion (Typicality and Adequacy) for plaintiffs' opposition to writ app. filed in La. S. Ct. by the State defendants still challenging Class Cert.; also proofreading entire brief several times and submitting corrections to grammatical oversights, typos etc., and general proofreading, thorough; brief is filed with La. S. Ct. on 6-29-18, to which JGO responds by email "this is a really excellent piece of legal work" this brief was not just a rehash of what we have submitted before, but a nearly complete overhaul with additional argument and major improvements to our earlier memos. Work on this item dominated the month of June 2018. Writ unanimously denied by LASC 10-8-18. No rehearing applied for. Class Certification is final. 28

**TOTAL HOURS TO DATE: Attorney Hours** 1,346.0  
**Travel Time** 166.5  
**Secretarial/Paralegal** 225.0

**Statement Total:**  
**Attorney @ \$400/hr.** \$538,400  
**Travel Time (atty) @\$250/hr.** 41,625  
**Secretary Paralegal @\$75./hr.** 16,875

**TOTAL DUE AS COMPUTED 3-12-19: \$596,900**

