IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ANTHONY D. KOLTON, S. DAVID GOLDBERG, JEFFREY S. SCULLEY, and HENRY C. KRASNOW, individually and on behalf of classes of all others similarly situated,	)	
Plaintiffs,	)	
v.	)	**No. 16-cv-3792**
	)	**Hon. Charles P. Kocoras**
MICHAEL W. FRERICHS, Treasurer of the State of Illinois,	)	
Defendant.	)	

PLAINTIFFS' RESPONSE IN SUPPORT OF MOTION FOR AWARD OF ATTORNEYS' FEES PURSUANT TO THE COURT'S ORDER OF OCTOBER 21, 2021

Plaintiffs brought a highly risky class action to overturn an unconstitutional state law, establish new federal precedent and return tens of millions of dollars to past and present unclaimed property owners whose money the State of Illinois had been taking in violation of the Takings Clause of the U.S. Constitution for decades. Despite staunch opposition from the state and after two successful appeals to the Seventh Circuit, Plaintiffs succeeded in establishing that federal constitutional takings law entitles an unclaimed property owner to income that the state earns while property is in its hands, and that right "does not depend on what it [the property] had been earning in the owner's hands." *Goldberg v. Frerichs,* 912 F.3d 1009, 1011 (7th Cir. 2019) ("*Kolton II*); *Kolton v. Frerichs*, 869 F.3d 532 (7th Cir. 2017) ("*Kolton I*"). No other law firm or

lawyer had successfully brought such a case in federal court, and no other lawyer or law firm sought to appear or intervene to assist in the prosecution of this case.[1]

As a result of Plaintiffs' successful litigation strategy, the parties entered into a settlement agreement conservatively valued at $47 million that will ensure that members of two classes – (1) those whose property was returned after the decision in *Kolton I* and through July 20, 2021 (the "(b)(3) Class") and (2) those whose property was being held by the State as of July 20, 2021 (the "(b)(2) Class) -- will recover interest on their money from the fund created for their benefit.[2] The Settlement will benefit Future Claimants—non-class members whose money property is delivered to the Treasurer after July 20, 2021— because the state will be required to return millions of dollars in interest to them each year.[3]

The named Plaintiffs in this action, three of whom are lawyers and all of whom are "sophisticated", approved the Settlement, including the requested attorneys' fee award. Doc. #112-6, #112-7, #112-8 and #112-9. None of the hundreds of thousands of class members, some of whom were large property owners (Defendant's Response to Plaintiffs' Motion for Attorneys'

[1] This is not surprising given that Mr. Susman and his then law firm were truly pioneers in challenging the constitutionality of state statutes prohibiting states from returning the earnings on unclaimed cash property in their custody to property owners. His first success was a case brought under the Ohio state constitution. *Sogg v. Zurz,* 905 N.E.2d 187 (Ohio 2009). He was not successful, however, in his efforts in Illinois state court. *Cwik v. Giannoulious,* 237 Ill.2d 409, 930 N.E. 2d 990 (2010), Mr.Susman brought a similar challenge to the Indiana statute in federal court and lost in the district court. In the appeal brought by Mr. Susman and Ms. Saunders, the Seventh Circuit reversed but limited its ruling to the facts of the case, holding that an individual plaintiff who had held an interest-bearing account before the property was turned over to the state was entitled to the interest the state had earned on her property. *Cerajeski v. Zoeller,* 735 F.3d 577 (7th Cir. 2013). Relatively few unclaimed property owners fit within that category. Doc. #126 at 12 n.8.

[2] Defendant has calculated that the (b)(3) class is entitled to $16 million and has estimated that $31 million will be returned to the (b)(2) class. Plaintiffs' expert estimates that as much as twice that amount will likely be returned to the (b)(2) class. See Doc. #126-2 for both estimates.

[3] Using the Defendant's expert's calculation of the benefit to the (b)(3) class, counsel estimates the benefit to the Future Claimants to be $3 ½ to $4 million per year. Although the state is not precluded from changing the formula for paying just compensation to Future Claimants, it is bound to pay them. And Future Claimants are not precluded from challenging any formula the state uses. Doc. #112-1, Section 2.13.

Fees and Other Relief) ["Def. First Response"] Doc. #131 at 11 and undoubtedly "sophisticated" objected to the requested fee award. In urging this Court to base any fee award on lodestar, the Treasurer ignores all of the above undeniable facts, many of which he has previously admitted. He does not suggest that the fee representing 20.3% of the classes' recovery, which Plaintiffs' counsel is requesting, is not reasonable, but only that it is disproportionate to the lodestar in this case and even more disproportionate to the reduced lodestar that the Treasurer finds appropriate here.

Defendant's Lodestar Argument

The Treasurer argues that this Court should use the lodestar method to award attorneys' fees because that method produces the "fairest" result in this case. Nothing could be further from the truth. The lodestar method would preclude the Court from taking into account the experience of counsel in the areas of the law in this case, the quality of the legal work done and the result achieved and the real risk that there would be no recovery and thus no fees to compensate counsel for their work. The extent of this risk is dramatically demonstrated by the fact that it took two trips to the Court of Appeals to establish that there would be any recovery of any real value to the classes and claimants.[4]

The Seventh Circuit's discussion of the problems with the lodestar method in *Kirchoff v. Flynn*, 786 F.2d 320, 324-325 (7th Cir. 1986), a Section 1988 individual fee case is equally applicable to this common fund class action, where the class includes hundreds of thousands of individuals, most of whom have a small stake in the case, and the named Plaintiffs have agreed

[4] Based on the interest the Treasurer paid on interest-bearing accounts under the Revised Uniform Unclaimed Property Act, if only those owners who held interest-bearing accounts while the property was in their hands were entitled to just compensation, the number of persons entitled to, and the amount the state would have owed as just compensation would be greatly reduced. Doc. #126 at 12 n.8.

to a contingent fee and are most concerned about the result and not able or in a position to monitor the number of hours the lawyers spend:

> An hourly fee creates an incentive to run up hours, to do too much work in relation to the stakes of the case. An hourly fee may be appropriate where it is hard to define output (in litigation, for example, the outcome turns on the merits and not simply the lawyer's skill and dedication), so the hourly method measures and prices the inputs, the attorney's hours. Again, however, it is necessary to monitor the lawyer's work. The general counsel of a corporation or a sophisticated client may measure inputs well, but in litigation under §1988 the plaintiff usually has little ability to monitor and also has little incentive to do so….So the court rather than the plaintiff must do the supervision. This in turn creates complex, secondary litigation about fees.
>
> Judicial monitoring also is necessarily imprecise. The judge cannot readily see what legal work was reasonably necessary at the time; the judge first sees the application for fees after the case is over, and hindsight may obscure the difficult decisions made under uncertainty as much as it illuminates them. The Supreme Court's oft-repeated wish that litigation about fees not turn into a second major lawsuit (e.g., *Hensley, supra*, 461 U.S. at 437) is an unattainable dream. The computation of hourly fees depends on the number of hours "reasonably" expended, the hourly rate of each, the calculation of the time value of money (to account for delay in payment), potential increases and decreases to account for risk and the results obtained, and a complex of other considerations under the heading of "billing judgment." The stakes … ensure that the parties will pursue all available opportunities for litigation….The fuzziness of the criteria (what is a "reasonable" number of hours?) ensures that people seeking opportunities to contest the fees will not need to search hard.
>
> There is no wholly satisfactory way to employ hourly rates when the plaintiff can not or will not monitor his own attorney and the defendant has both the incentive and ability to turn the request for fees into a second major litigation. The "lodestar" method makes the court a public utilities commission, regulating the fees of counsel after the services have been performed, thereby combining the difficulties of rate regulation with the inequities of retrospective rate-setting. (citations omitted).

The pitfalls of the lodestar method that the court articulated in *Kirchoff v. Flynn* are amply demonstrated in this case. After the fact, Defendant challenges the hours expended – the total is too low to justify the fee request but the total expended in opposing Defendant's dispositive motions in the district court and on the fee request is too high; the hourly rates are too

high for this case; and the allocation of work was not appropriate. Defendant then comes up with his notion of what would be a reasonable lodestar. Defendant's Response to Plaintiffs' Supplemental Declaration and Expert Report ("Def. Second Response"), Doc. #141 at 20.

The Treasurer's argument that the total number of hours expended does not justify the fee would penalize Class Counsel for being skilled and experienced in the specialized area of the law in this case and for recognizing when that skill and experience brought them to a point where they could settle the case on excellent terms. At the time settlement was broached, the Seventh Circuit had remanded the case for further proceedings to determine "net interest." Those proceedings would have been complicated, time-consuming and expensive for the litigants and the Court and with an uncertain outcome. They certainly would have substantially increased the lodestar and expenses presented in any fee petition, but would the result have been as beneficial to the Class? And would there have been a third appeal, leading to further delay in any payment to the class members.

The Treasurer's attack on the number of hours Plaintiffs' counsel spent opposing Defendant's motions in the district court or on having senior lawyers spend small amounts of time on research is without merit. How can Defendant judge the appropriate amount of time to be spent opposing dispositive motions. When skilled lawyers identify a specific problem and look into it themselves, who is a Defendant, or even a court, to say after the fact that it would have been more efficient for the lawyer to stop, call in an associate, assign the research, wait for a memo, review and discuss the memo and possibly decide it was not a correct or complete analysis. The attack on time spent on fees is similarly without merit. Defendant is in part responsible for the time spent by insisting until two days before the October 21, 2021 Fairness Hearing that this was not a common fund case and that fees could be awarded only under §1988.

Plaintiffs' Counsel spent time on refuting that position as well as on demonstrating that, consistent with the settlement agreement and in the interest of the classes, the fairest and most efficient way to pay attorneys' fees was to use the hundreds of millions of dollars in unidentified or unclaimed cash in the Unclaimed Property Trust Fund ("UPTF") that belongs to the Class.

The Treasurer criticizes Counsel's hourly rates because lawyers who handle "civil rights" cases – and Defendant chooses to classify this case a "civil rights case" – bill at lower rates. Plaintiffs' lawyers are not strictly speaking "civil rights" lawyers (other than on a *pro bono* basis) and this case is not a typical "civil rights" case. It is better denominated as a constitutional class action settled on a common fund basis. It is thus not surprising that not one of the civil rights bar members has brought a case like this one.[5] Regardless of how one chooses to classify this case, "civil rights," "constitutional tort," "inverse condemnation," "conversion," it involved complex constitutional and procedural issues and it required changing state law.

Plaintiffs' Counsel's hourly rates – to the extent they use them to justify their fees or share of fees in class actions where the fee award is always a percentage of the recovery – reflect their experience skill and knowledge of the market rates for lawyers with similar skills and experience who prosecute or defend complex civil litigation, including plaintiffs' class action lawyers. The Treasurer argues that this case is different from every other area of the law, including shareholder derivative suits, securities, antitrust, bankruptcy, consumer fraud, ERISA, that hourly rates for Chicago attorneys cannot be compared to rates in other large cities, and that hourly rates for senior lawyers in small firms or who practice solo cannot be compared to senior

[5]Nor is it surprising that when Jon Loevy, whom Defendant identifies as a respected civil rights lawyer, prosecuted a large complex class action against Cook County, he sought and was awarded a one-third percentage of the class recovery and that the parties included in the settlement of that case an agreement that assigned to plaintiffs the County's rights against certain insurers and that entitled Class Counsel to one-third of any recovery in the second case. 1:06-CV-00552, Doc. #637, Doc. #650 at 13; *Young v. County of Cook,* 2017 WL 4164238*1 (N.D. Ill. Sept. 20, 2017).

partners in large firms. This pretty much puts Plaintiffs' Counsel in a class by themselves, except, of course, for civil rights lawyers, who for a variety of reasons -- likely including dedication, public mindedness and the market – bill their time at a lower rate than lawyers in every area of the law in which Plaintiffs' counsel practice. The fundamental problem with Defendant's argument is that no one would have brought this case if he or she anticipated the fee advocated by Defendant, that is, a contingent fee set at $500 or so an hour with a possible risk multiplier of no more than two, and the further possibility that not all the hours would be compensated.

The Treasurer's argument for a lodestar-based fee also ignores established Seventh Circuit precedent recognizing that a percentage of the recovery method most closely reflects what lawyers taking on a risky contingent fee class action case would negotiate at the outset. Where, as here "the prevailing method of compensating lawyers for 'similar services' is the contingent fee, then the contingent fee *is* the 'market rate.'" *Kirchoff v. Flynn*, 786 F.2d at 324. In *Williams v. Rohm & Haas Pension Plan,* 658 F.3d 629, 635 (7th Cir. 2011), the court explained:

> [T]he district court must try to assign fees that mimic a hypothetical *ex ante* bargain between the class and its attorneys. *In re Synthroid Mktg Litig*., 264 F.3d 712, 718-19 (7th Cir. 2001). The court must base the award on relevant market rates and the *ex ante* risk of nonpayment. *Id.* To determine the market for attorney's fees, the court should look to "actual fee contracts that were privately negotiated for similar litigation, information from other cases, and data from class-counsel actions." *Taubenfeld v. AON Corp.*, 415 F.3d 597, 599 (7th Cir. 2005).

As Plaintiffs have demonstrated in their opening memorandum and as Professor Silver has concluded, the percentage of recovery method, which takes into account risk and the market value of the services Plaintiffs' counsel provided to get the result achieved, is almost exclusively used in awarding fees in common fund cases. Doc. #126 at 8-11; Doc. #126-1. The market rate is a percentage fee, not the hourly rate or the lodestar.

Although the Treasurer acknowledges this is a common fund case, he attempts to distinguish this case from every other common fund case. He never explains, however, why the same reasons for awarding a percentage of recovery fee that apply to all the common fund cases Plaintiffs cite in their opening brief are not applicable here. As we have discussed, this is precisely the sort of case that an experienced lawyer would not take on an hourly basis. Rather the lawyer would negotiate in advance for the percentage of any recovery which he or she would be entitled to. Thus, the Treasurer's suggestion that no sophisticated client would pay an hourly rate of over $5,000 (Def. Second Response at 2, 19) is beside the point. A lawyer being paid an hourly rate by a client is not working on a contingency and has no risk of non-payment for services provided. More to the point is Professor Silver's statement that to his knowledge "sophisticated clients *never* use the lodestar method … when they hire lawyers on contingency." Doc. 126-1 at 39, ¶ 100 (emphasis in original). And equally to the point, an experienced lawyer would not agree in advance to take on a risky contingent case seeking a monetary recovery for a lodestar-based fee.

Using the "mimic the market" approach, and awarding a fee based on 20.3% of the recovery. rather than the lodestar, results in a fee that is reasonable and fair under any standard. It will recognize the necessity of providing an incentive to counsel to obtain the highest recovery possible as efficiently as possible and recognize the considerable risk assumed. It is also fair to the Classes because, as Plaintiffs' Counsel propose, any award of attorneys' fees would be apportioned among all beneficiaries of the settlement, that is all members of both Classes, and paid from the Unclaimed Property Trust Fund. As set forth in the Supplemental Joint Declaration of Class Counsel, Doc. #138-1, ¶¶ 5-9, only this proposal is consistent with the common fund doctrine and Section 3.2.5 of the Settlement Agreement, makes administrative sense and is fair and equitable to all class members. And importantly it will relieve the Court of the role of billing

auditor or regulatory agency and bring an end to the litigation. Defendant has also benefitted by agreeing to a settlement that brings closure, as claims of past and present property owners are included, and that provides for payment of fees as well as interest to class members from the UPTF rather than the State Treasury.

The Lodestar Cross Check

Plaintiffs' Counsel have requested a fee that is 20.3% of the settlement value conservatively estimated, and less than 15% if the class recovery approaches the estimate of Plaintiffs' expert, Professor Peltzman. Doc. #:126-2 at 6. A 20.3% contingent fee is well within the percentage range common in risky and complex class actions such as this. Doc. #126 at 11-13; Doc. #126-1 at 20-38. The requested fee of $9.5 million represents a multiplier of 7.23 of the recorded lodestar in this case. Defendant contends that the fee should be capped by applying a multiplier of no more than two to the lodestar or a reduced lodestar. Def. Second Response, Doc. #141, at 20. Defendant's rationale for using this cap in this case is that courts in this Circuit have used this multiplier in other cases.

The Seventh Circuit has never required a cross check and has criticized use of a lodestar multiplier cap such as the one suggested by Defendant in this case:

> The Adamski Objectors' lodestar argument? That any percentage fee award exceeding a certain lodestar multiplier is excessive – echoes the "megafund" cap we rejected in *Synthroid*. See 264 F.3d at 718 (reasoning that "[p]rivate parties would never contract such an arrangement, because it would eliminate counsel's incentive to press for" a higher settlement). While the district court did not impose a lodestar cap, it did consider Class counsel's lodestar data before assessing fees. It found, however, that a pure percentage fee approach best replicated the market for ERISA class action attorneys. The Adamski Objectors have not shown this finding to be an abuse of discretion. *Williams v. Rohm & Haas Pension Plan*, 658 F.3d 629, 636 (7th Cir. 2011).

Courts in this Circuit have criticized a cross check, reasoning that a lodestar multiplier "does nothing more than introduce a purely arbitrary factor (untested by market principles) into the mix as a sort of rationalization to support the announced conclusion." *In re Comdisco Sec. Litig.,* 150 F. Supp. 2d 943, 948 and n.10 (N.D. Ill. 2001); see also *Will v. General Dynamics Corp*., 2010 U.S. Dist. LEXIS 123349 *11-*12 (S.D. Ill. Nov. 22, 2010). Other courts award fees on a percentage basis after doing a lodestar

cross check. Professor Silver's Expert Report points out that a study of fee awards in securities class actions that he and two co-authors conducted found that "cross-checked fee awards [did] not differ statistically from those based on the percentage method alone." Doc. 126-1 at 40, ¶99 (citation omitted). Professor Silver's Supplemental Expert Report identifies some of the courts that have approved percentage awards where the lodestar cross check produced multipliers as high as 8 or 19 or 66. Doc. #138-5 at 6-7.[6]

But plainly a mechanical cap of two applied to any lodestar is not the market rate the Seventh Circuit advocates. The conclusion eventually reached by the district court in *Williams v. Rohm & Haas Pension Plan*, 2010 U.S. Dist. LEXIS 121648 (S.D. Ind. Nov. 12, 2010), after requiring class counsel to provide estimated summaries of hours worked and hourly rates claimed to be appropriate is instructive. In that case, plaintiff's counsel had requested a fee of $43.5 million or 24% of the class action settlement fund. After reviewing the summaries, the court found "more enlightening" the declaration of another litigator of complex cases, Paul Slater, who opined that:

> The absence of any reliable data from which to accurately estimate the amount of time and effort required to prosecute this action or the likelihood and scope of success leaves qualified competent counsel with no alternative other than to negotiate a contingency fee arrangement. *Id*. at *3.

In his Declaration, Mr. Slater explained that a substantial recovery is not a "windfall:"

> Because it is so difficult to predict how a particular case will proceed, a flat percentage would be adopted. If, as here, counsel achieve a substantial recovery, the percentage fee does not become a "windfall." That outcome will be understood by a sophisticated client *ex ante* as necessary and desirable to provide an incentive to obtain as high a recovery as possible and also as consideration for assuming the risk that the recovery will turn out to be low or nothing at all. Exhibit I, Doc. #317-3 at 4, ¶12.[7]

[6] The Treasurer's assertion that Professor Silver's inclusion of *AMS. Mining Corp. v. Theriault*, 51 A. 3d 1213, 1252 (Del. 2012) is "not an accurate statement of the attorneys' fees award" is wrong. Def. Second Response, Doc. #141, at 14-15. The defendant in *AMS Mining* objected to a 15% fee and expense award on the grounds that it was 66 times the value of time and expenses and would have paid plaintiff's counsel more than $35,000 per hour. The Delaware Supreme Court rejected Defendant's argument and approved the percentage fee with a multiplier of 66.

[7] A copy of the Summary filed by class counsel in response to the Court's order is attached as Exhibit I.

The court went on to approve the percentage fee as requested without mentioning the hourly rates or that the percentage fee of $43.5 million was just over five times the lodestar. Exhibit I.[8]

CONCLUSION

For the reasons set forth above and in Plaintiffs' Memorandum in Support of Motion for Award of Attorneys' Fees and Reimbursement of Expenses (Doc. # 126) and Plaintiffs' Supplemental Declaration and Expert Report (Doc #138), Plaintiffs respectfully request that the Court grant their motion in its entirely and award attorneys' fees, including costs and expenses, in the amount requested.

Respectfully submitted,

Dated: December 2, 2021

/s/ Terry Rose Saunders

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[8] The hourly rates of senior lawyers, some of whom were from small firms, were in the $800 range in 2010.

CERTIFICATE OF SERVICE

I certify that, on December 2, 2021, I caused a copy of the foregoing document to be served on Counsel for the Defendant via the Court's ECF system.

/s/ Terry Rose Saunders

EXHIBIT I

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA

GARY WILLIAMS and NANCY MEEHAN, Individually and on behalf of all others similarly situated,	)	
Plaintiffs,	)	Civil No. 4:04-CV-0078-SEB-WGH
vs.	)	
ROHM AND HAAS PENSION PLAN,	)	
Defendant.	)	

CLASS COUNSEL'S SUMMARY OF HOURS, RATES AND COSTS IN RESPONSE TO THE COURT'S APRIL 21, 2010 ORDER

Class counsel attach hereto a summary of their costs (Exhibit A), an estimate of the hours worked by each legal professional and each professional's billable rate, by year (Exhibit B), as well as the affidavit of Paul Slater, which addresses the two issues raised in the Court's April 21, 2010 order concerning the award of attorneys' fees (Exhibit C).

Explanatory Remarks Regarding Summary

As class counsel have previously indicated, with the exception of Jenner & Block attorneys when working for defendants, they do not accept ERISA cases on an hourly basis and do not regularly maintain hourly records for the purpose of billing clients. Consequently, the hours indicated on the attached summary represent estimates of the hours worked, by professional, based upon a review of the available records. Because class counsel do not take ERISA cases on an hourly basis and have no history of charging hourly rates on ERISA matters, class counsel have used

the historical hourly rates charged by comparable partners in Jenner & Block's ERISA practice group for the relevant years. For example, the hourly rates ascribed to Mr. Sprong correspond to the average of the rates charged by two comparable partners of Jenner & Block's ERISA practice group.

Date: June 15, 2010

Respectfully submitted,

/s/ Douglas R. Sprong

One of the Attorneys for the Class

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CERTIFICATE OF SERVICE

I hereby certify that on June 15, 2010, the foregoing was filed electronically. A copy of the foregoing is being emailed, per the Court's electronic filing system, to the following counsel of record:

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A copy of the foregoing was sent by First Class mail to the following on June 15, 2010:

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/s/ Douglas R. Sprong

Actual and Anticipated Expenses By Firm
Through 6/15/10

	Total	Anticipated Future Expenses	Totals By Firm
Korein Tillery	106,863.11	10,000.00	$ 116,863.11
Jenner & Block	58,809.16	5,000.00	$ 63,809.16
Law Offices of William K. Carr	14,779.00	1,000.00	$ 15,779.00
Law Offices of T. J. Smith	6,600.00		$ 6,600.00
			$ 203,051.27

Exhibit A

	Douglas R. Sprong Attorney Korein Tillery, LLC			William K. Carr Attorney Law Offices of William K. Carr			Steven A. Katz Attorney Korein Tillery, LLC			Stephen M. Tillery Attorney Korein Tillery, LLC			Christopher A. Hoffman Attorney Korein Tillery, LLC		
	Hours	Rate	Total	Hours	Rate	Total	Hours	Rate	Total	Hours	Rate	Total	Hours	Rate	Total
2001	100	$430	$ 43,000	150	$430	$ 64,500	20	$385	$ 7,700	-	$385	$ -			
2002	200	$460	$ 92,000	200	$460	$ 92,000	50	$425	$ 21,250	10	$425	$ 4,250			
2003	200	$490	$ 98,000	150	$490	$ 73,500	50	$440	$ 22,000	10	$440	$ 4,400			
2004	300	$518	$ 155,400	250	$518	$ 129,500	50	$470	$ 23,500	10	$470	$ 4,700			
2005	300	$570	$ 171,000	200	$570	$ 114,000	50	$540	$ 27,000	10	$540	$ 5,400			
2006	400	$595	$ 238,000	250	$595	$ 148,750	50	$565	$ 28,250	20	$565	$ 11,300			
2007	500	$713	$ 356,500	350	$713	$ 249,550	200	$675	$ 135,000	20	$675	$ 13,500			
2008	500	$788	$ 394,000	350	$788	$ 275,800	100	$775	$ 77,500	50	$775	$ 38,750	135	$455	$ 61,425
2009	700	$825	$ 577,500	550	$825	$ 453,750	200	$800	$ 160,000	50	$800	$ 40,000	135	$480	$ 64,800
2010	400	$875	$ 350,000	200	$875	$ 175,000	150	$850	$ 127,500	50	$850	$ 42,500	500	$490	$ 245,000
SUB	**3,600**		**$ 2,475,400**	**2,650**		**$ 1,776,350**	**920**		**$ 629,700**	**230**		**$ 164,800**	**770**		**$ 371,225**
2010 Estimated	300	$875	$ 262,500	100	$875	$ 87,500	50	$850	$ 42,500	25	$850	$ 21,250	300	$490	$ 147,000
2011 Estimated	100	$875	$ 87,500	20	$875	$ 17,500	20	$850	$ 17,000	10	$850	$ 8,500	50	$490	$ 24,500
TOTAL	**4,000**		**$ 2,825,400**	**2,770**		**$ 1,881,350**	**990**		**$ 689,200**	**265**		**$ 194,550**	**1,120**		**$ 542,725**

Exhibit B

	Diane M. Heitman Attorney Korein Tillery, LLC			James T. Malysiak Attorney Freeman, Freeman & Salzman			James T. Malysiak Attorney Jenner & Block			Lee A. Freeman, Jr. Attorney Freeman, Freeman & Salzman			Lee A. Freeman, Jr. Attorney Jenner & Block		
	Hours	Rate	Total	Hours	Rate	Total	Hours	Rate	Total	Hours	Rate	Total	Hours	Rate	Total
2001															
2002															
2003															
2004															
2005	15	$345	$ 5,175												
2006	20	$360	$ 7,351	114	$495	$ 56,430				3	$525	$ 1,575			
2007	30	$385	$ 11,550	210	$495	$ 103,950	313	$635	$ 198,755	10	$525	$ 5,250	65	$715	$ 46,189
2008	20	$455	$ 9,100				449	$660	$ 296,406				64	$800	$ 51,200
2009	20	$480	$ 9,600				63	$690	$ 43,608				87	$880	$ 76,560
2010	20	$490	$ 9,800				136	$715	$ 97,026				137	$855	$ 117,221
SUB	**125**		**$ 52,576**	**324**		**$ 160,380**	**961**		**$ 635,795**	**13**		**$ 6,825**	**353**		**$ 291,170**
2010 Estimated	10	$490	$ 4,900	N/A			200	$715	$ 143,000	N/A			100	$855	$ 85,500
2011 Estimated	-	$490	$ -	N/A			10	$715	$ 7,150	N/A			10	$855	$ 8,550
TOTAL	**135**		**$ 57,476**	**324**		**$ 160,380**	**1,171**		**$ 785,945**	**13**		**$ 6,825**	**463**		**$ 385,220**

	Leann M. Eckhardt Paralegal Korein Tillery, LLC			T. J. Smith Attorney Law Offices of T.J. Smith			Actuarial Consultant			Richard P. Campbell Attorney Jenner & Block			Robert L. King Attorney Korein Tillery, LLC		
	Hours	Rate	Total	Hours	Rate	Total	Hours	Rate	Total	Hours	Rate	Total	Hours	Rate	Total
2001	2	$160	$ 320	35	$250	$ 8,750	-	$325	$ -						
2002	25	$165	$ 4,125	35	$275	$ 9,625	5	$325	$ 1,625						
2003	25	$195	$ 4,875	35	$295	$ 10,325	-	$325	$ -						
2004	30	$220	$ 6,600	50	$310	$ 15,500	-	$325	$ -						
2005	30	$235	$ 7,050	35	$345	$ 12,075	-	$325	$ -						
2006	30	$250	$ 7,500	50	$360	$ 18,000	-	$325	$ -						
2007	40	$260	$ 10,400	65	$385	$ 25,025	15	$325	$ 4,875	2	$580	$ 1,044			
2008	40	$290	$ 11,600	65	$455	$ 29,575	400	$325	$ 130,000	12	$580	$ 7,134			
2009	121	$300	$ 36,300	90	$480	$ 43,200	365	$325	$ 118,625	4	$605	$ 2,239			
2010	376	$300	$ 112,800	40	$490	$ 19,600	65	$325	$ 21,125	61	$605	$ 37,147	50	$490	$ 24,500
SUB	**719**		**$ 201,570**	**500**		**$ 191,675**	**850**		**$ 276,250**	**79**		**$ 47,564**	**50**		**$ 24,500**
2010 Estimated	250	$300	$ 75,000	20	$490	$ 9,800	40	$325	$ 13,000	25	$605	$ 15,125	-		
2011 Estimated	250	$300	$ 75,000	-	$490	$ -	10	$325	$ 3,250	10	$605	$ 6,050	-		
TOTAL	**1,219**		**$ 351,570**	**520**		**$ 201,475**	**900**		**$ 292,500**	**114**		**$ 68,739**	**50**		**$ 24,500**

	Joseph J. Bial Attorney Jenner & Block			Theresa L. Busch Paralegal Jenner & Block			Christopher V. Meservy Attorney Jenner & Block			Gregory M. Boyle Attorney Jenner & Block			John F. Kinney Attorney Jenner & Block		
	Hours	Rate	Total	Hours	Rate	Total	Hours	Rate	Total	Hours	Rate	Total	Hours	Rate	Total
2001															
2002															
2003															
2004															
2005															
2006															
2007	21	$350	$ 7,245	4	$260	$ 1,040									
2008				11	$290	$ 3,103									
2009															
2010							9	$410	$ 3,854	7	$635	$ 4,445	7	$660	$ 4,356
SUB	**21**		**$ 7,245**	**15**		**$ 4,143**	**9**		**$ 3,854**	**7**		**$ 4,445**	**7**		**$ 4,356**
2010 Estimated	-			-			-			-			-		
2011 Estimated	-			-			-			-			-		
TOTAL	**21**		**$ 7,245**	**15**		**$ 4,143**	**9**		**$ 3,854**	**7**		**$ 4,445**	**7**		**$ 4,356**

	Benjamin J. Wimmer Attorney Jenner & Block			William D. Heinz Attorney Jenner & Block			Julie E. Raden Paralegal Jenner & Block			Aidan O. Gilbert Paralegal Jenner & Block			Howard S. Suskin Attorney Jenner & Block		
	Hours	Rate	Total	Hours	Rate	Total	Hours	Rate	Total	Hours	Rate	Total	Hours	Rate	Total
2001															
2002															
2003															
2004															
2005															
2006							4	$250	$ 1,000						
2007										1	$260	$ 260			
2008															
2009															
2010	6	$440	$ 2,640	5	$910	$ 4,186							0.20	$855	$ 171
SUB	**6**		**$ 2,640**	**5**		**$ 4,186**	**4**		**$ 1,000**	**1**		**$ 260**	**0.20**		**$ 171**
2010 Estimated	-			-			-			-			-		
2011 Estimated	-			-			-			-			-		
TOTAL	**6**		**$ 2,640**	**5**		**$ 4,186**	**4**		**$ 1,000**	**1**		**$ 260**	**0.20**		**$ 171**

	Kathryn Lynn Turner Paralegal Korein Tillery, LLC			Lois E. Harris Paralegal Korein Tillery, LLC			Tina L. Bruce Paralegal Korein Tillery, LLC			Sheila E. Sorter Paralegal Korein Tillery, LLC			Laura A. Dunn Paralegal Korein Tillery, LLC		
	Hours	**Rate**	**Total**	**Hours**	**Rate**	**Total**	**Hours**	**Rate**	**Total**	**Hours**	**Rate**	**Total**	**Hours**	**Rate**	**Total**
2001	5	$150	$ 750												
2002	5	$150	$ 750												
2003	5	$150	$ 750												
2004	8	$150	$ 1,200												
2005	20	$150	$ 3,000												
2006	10	$165	$ 1,650												
2007	20	$195	$ 3,900												
2008	20	$220	$ 4,400												
2009	20	$235	$ 4,700	55	$235	$ 12,925	6	$235	$ 1,410	9	$235	$ 2,174	23	$235	$ 5,405
2010	20	$250	$ 5,000	157	$250	$ 39,250									
SUB	**133**		**$ 26,100**	**212**		**$ 52,175**	**6**		**$ 1,410**	**9**		**$ 2,174**	**23**		**$ 5,405**
2010 Estimated	10	$250	$ 2,500	N/A			N/A			N/A			N/A		
2011 Estimated	20	$250	$ 5,000	N/A			N/A			N/A			N/A		
TOTAL	**163**		**$ 33,600**	**212**		**$ 52,175**	**6**		**$ 1,410**	**9**		**$ 2,174**	**23**		**$ 5,405**

	Robin L. Flynn Paralegal Korein Tillery, LLC			Janet Wittiered Paralegal Korein Tillery, LLC			Lisa L. Lucas Paralegal Korein Tillery, LLC			Juanita D. Brumitt Paralegal Korein Tillery, LLC		
	Hours	Rate	Total	Hours	Rate	Total	Hours	Rate	Total	Hours	Rate	Total
2001												
2002												
2003												
2004												
2005												
2006												
2007												
2008												
2009	6	$235	$ 1,410	5	$235	$ 1,175	3	$235	$ 705	4	$235	$ 940
2010												
SUB	**6**		**$ 1,410**	**5**		**$ 1,175**	**3**		**$ 705**	**4**		**$ 940**
2010 Estimated	N/A			N/A			N/A			N/A		
2011 Estimated	N/A			N/A			N/A			N/A		
TOTAL	**6**		**$ 1,410**	**5**		**$ 1,175**	**3**		**$ 705**	**4**		**$ 940**

	Patricia A. Holloway Paralegal Korein Tillery, LLC			
	Hours	Rate	Total	
2001				
2002				
2003				
2004				
2005				
2006				
2007				
2008				
2009	14	$235	$ 3,290	
2010				
SUB	**14**		**$ 3,290**	**$ 7,432,862**
2010 Estimated	N/A			
2011 Estimated	N/A			
TOTAL	**14**		**$ 3,290**	**$ 8,602,437**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

GARY WILLIAMS and NANCY MEEHAN, Individually and on behalf of all others similarly situated,	)	
Plaintiffs,	)	Civil No. 4:04-CV-0078-SEB-WGH
v.	)	
ROHM AND HAAS PENSION PLAN,	)	
Defendant.	)	

Declaration of Paul E. Slater in Support of Class Counsel's Motion for Award of Attorneys' Fees, Costs and Incentive Awards

I, Paul E. Slater, being competent to testify, hereby make the following declaration pursuant to 28 U.S.C. § 1746 in support of Class Counsel's Motion for Award of Attorneys' Fees and Costs and Incentive Awards:

1. I am a member in good standing of the Illinois State Bar. I am a co-founder and have been a partner of the Sperling and Slater law film in Chicago since 1976. I make this declaration of my personal knowledge and experience.

2. I graduated from Columbia University in 1967 with a B.A. in economics. I received my J.D. *magna cum laude*, class valedictorian, and Order of the Coif from Northwestern University Law School in 1970.

3. Following law school I was a member of the faculty at the University of California School of Law (Boalt Hall) in Berkeley, California, as well as a Professor of Law at the Northwestern University School of Law. While I have been practicing law full-time since 1977, I remained an Adjunct Assistant Professor of Law at Northwestern University, where I taught advanced courses in antitrust law until 2009.

Exhibit C

4. For the past 33 years, my legal practice has focused on high stakes, complex commercial litigation and counseling. I have represented both plaintiffs and defendants in trial and appellate proceedings. While roughly three-fourths of my work has been in the antitrust area, I have also worked on complex trademark, patent and ERISA cases.

5. With respect to ERISA litigation, I have served as co-lead counsel at trial and on appeal in two an ERISA class actions on behalf of a class of retirees: (1) *Mathews v. Sears Pension Plan*, 1997 WL 392245 (N.D. Ill.1997) *aff'd,* 144 F.3d 461 (7th Cir. 1998), *cert. denied* 525 U.S. 1054 (1998), and (2) *Rybarczyk v. TRW, Inc.*, 1997 WL 580609 (N.D. Ohio 1997), *aff'd in part*, 235 F.3d 975 (6th Cir. 2000). Both were filed in 1995.

6. These two cases illustrate the difficulty and my inability, despite my experience, to estimate the amount of time required to prosecute ERISA cases and to predict the plaintiffs' chances of success. We lost *Mathews* on the basis of what the trial and appellate courts characterized as an "extrinsic ambiguity" in the Plan. On the other hand, we recovered $52 million for the class in *Rybarczyk,* and we were awarded our requested fee of 30 percent, plus costs. At the outset, I thought that *Mathews* was the stronger case and that our chances of success in *Mathews* were greater than *Rybarczyk*. The issues in *Rybarczyk* were similar to those involved in the pending matter, but not as complicated--only the calculation of lump sum distributions of “subsidized” early retirement benefits to employees who took early retirement between October 22,1986 and July 1, 1996.

7. This Court's Order on Motion for Reconsideration (April 21, 2010) states that in making an *ex ante* assessment of a negotiated attorneys' fee [the market rate], it is proper to assume that the negotiation occurred between lawyers and a sophisticated legal consumer." The Court further assumes that in this negotiation, the attorneys "are fully competent in making estimates of the required expenditures of attorney time and

effort to bring them at least into the same 'ballpark' as their contingency fee arrangement," suggesting that a deviation from that "ballpark" would result in a "windfall." Class counsel have requested that I address these two issues in terms of my personal experience in comparable complex litigation.

8. In my 33 years of litigating complex and high-stakes litigation, I have found that it is extremely difficult, and impossible with any precision, to estimate the number of hours our firm will be required to expend to bring a particular case to a favorable conclusion. The number of hours will depend on factors that are largely outside of plaintiffs' counsel's control, such as the strategy adopted by defense counsel, the court's rulings, facts that were not known at the inception of the case, and changes in law or in the interpretation of law. In my experience, litigation budgets are like weather forecasts: useful in the short term, but as things change, often unexpectedly, the budget must change too. Long term predictions of litigation costs are therefore not particularly useful.

9. I have extensive experience negotiating engagement agreements with sophisticated corporate clients, many of them publicly traded companies. I have represented these clients in complex antitrust matters on contingency fees, with percentages ranging from 25% to 33-1/3%, based on the net recoveries. These contingency fees were not dependent on the number of hours our firm spent on these cases, or the hours/years we may have internally estimated would be necessary to bring the cases to conclusion.

10. If I had negotiated a hypothetical sophisticated and informed class member to represent the class in this matter on a contingent fee basis (because the class member did not have the resources to fund the litigation), I would not have agreed to represent the class for anything less than 30% of the recovery in light of the daunting nature of the undertaking in terms of the size of the class, the time scope of the alleged violations, the

significant and varying risks to class member, the formidable legal issues to be confronted, and the competing opportunities where I could deploy my legal services and time and the resources of my law firm.

11. In my opinion, based on my own experience as to what it takes to achieve a large recovery in an ERISA class action against a well-funded, highly competent, and determined foe, the recovery for the class in these circumstances is a stunning success that could have been achieved only through ingenuity, perseverance and extraordinary hard work..

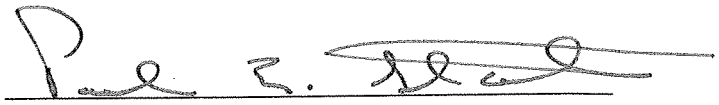
12. The parties negotiating *ex ante* a contingent fee agreement would provide a substantial market-based percentage of the ultimate recovery as a contingent fee. To provide an incentive for highly talented plaintiff's counsel (a scarce commodity in the legal services market) to take on a case on a pure contingency basis, thereby avoiding the need for any monetary investment by the client, the percentage must be very substantial, in the neighborhood of 331/3%. Because it is so difficult to predict how a particular case will proceed, a flat percentage would be adopted. If, as here, counsel achieve a substantial recovery, the percentage fee does not become a "windfall." That outcome would be understood by a sophisticated client *ex ante* as necessary and desirable to provide an incentive to obtain as high a recovery as possible and also as consideration for assuming the risk that the recovery will turn out to be low or nothing at all, as occurred in my *Mathews v. Sears* case. If the prospective client informed me that the percentage fee could be substantially reduced at the end of the case by an unpredictable amount depending upon how many hours I put into the case, the opportunity cost and risk would be too high, and I would decline to take the case.

13. In my opinion, if the Court had held an auction at the beginning of this case for experienced, knowledgeable, and qualified ERISA counsel to undertake this litigation, no

firm that met those criteria would have agreed to an aggregate percentage below the 24.17% that class counsel here requests. Indeed, that percentage is significantly lower than what I would have expected – or accepted *ex ante* – in a case of this magnitude and complexity.

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

Dated: June 11, 2010



Paul E. Slater