

Steven F. Freudenthal
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STATE OF WYOMING)
) ss.
COUNTY OF CAMPBELL)

IN THE DISTRICT COURT
SIXTH JUDICIAL DISTRICT
Civil Action No. 32753

Oedekoven Water & Hot Oil, Inc., a)
Wyoming corporation; Fred L. and)
Mary Ann Oedekoven Family Trust under)
agreement dated September 12, 1995,)
as amended; and Don and Betty Brown)
Family Trust under agreement dated)
September 12, 1995, as amended)

Plaintiffs,)

vs.)

BERRY PETROLEUM COMPANY,)
a Delaware corporation)

Defendant.)

FILED NO. _____
CIVIL PROBATE CRIMINAL
ADOPT DEL
NOV 28 2011
Michelle Lodge
DEPUTY CLERK OF DISTRICT COURT

APPLICATION FOR AWARD OF ATTORNEY FEES AND COSTS

(Berry)

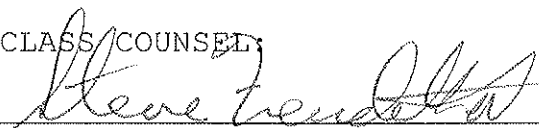
Plaintiffs, by and through their undersigned counsel, hereby apply to the Court for an award of attorneys fees and costs in the amount of fifteen percent (15%) of the aggregate settlement based on the majority rule of a "percentage of the fund."

The affidavits of Steven F. Freudenthal and John B. "Jack" Speight are attached in support of this application, and Plaintiffs' Points and Authorities for Award of Attorney Fees and Costs in Common Fund Class Action Cases accompany this application. In order to maintain a reasonable fee, particularly in light of the Application for Award of Attorney Fees and Costs

access to records provided by Berry Petroleum Company ("Berry"), the requested attorney's fees, costs and settlement administration expenses shall be limited to fifteen percent (15%) of the gross settlement amount, rather than the thirty percent (30%) provided in the retainer agreements with the named Plaintiffs. Based on an estimated amount of additional royalties payable under the proposed settlement of One Hundred Seventy-Five Thousand Nine Hundred and Eighty-Six Dollars and Twelve Cents (\$175,986.12) to be distributed to class members ("Distribution Amount"), the separate amount of Thirty-One Thousand and Fifty-Six Dollars and Thirty-Seven Cents (\$31,056.37) will be paid by Berry and distributed to Class Counsel in complete payment of attorneys fees, costs and settlement administration expenses ("Litigation Expenses"). The Litigation Expenses shall be adjusted proportionately for all amounts associated with any Opt-outs, deleted Potential Class Members and added members of the Settlement Class.

WHEREFORE, it is prayed for an order of the Court awarding attorney's fees, costs, expenses, and expenses of administration in the amount of fifteen percent of the aggregate settlement amount.

DATED this 23rd day of November, 2011.

CLASS COUNSEL:
BY: 
STEVEN F. FREUDENTHAL
Attorney No. 5-1468
Freudenthal & Bonds, P.C.
129 East Carlson Street
P. O. Box 387
Cheyenne, WY 82003
(307) 634-2240

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of November, 2011 I served the foregoing by hand-delivering a true and correct copy thereof to the following:

Randall B. Reed
Dray, Dyekman, Reed & Healey, P.C.
204 East 22nd Street
Cheyenne, WY 82001-3799


Steven F. Freudenthal

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Plaintiffs,)
)
vs.)
)
BERRY PETROLEUM COMPANY,)
a Delaware corporation)
)
Defendant.)

AFFIDAVIT OF STEVEN F. FREUDENTHAL
(Berry)

COMES NOW Steven F. Freudenthal and being duly sworn states
that:

1. I am a person of legal age, under no legal disability,
and have been a duly admitted and practicing member of the Wyoming
State Bar since 1975. Except as specifically noted otherwise, I

have personal knowledge of the statements set forth in this Affidavit, and they are true and correct.

2. The law firm of Freudenthal & Bonds, P.C. with co-counsel Howard Schrinar undertook the prosecution of actions against numerous producers of coal bed methane in the Powder River Basin of Wyoming, beginning in early 2001. Counsel do not require the Court to divide the fee and costs between counsel as they have previously agreed to a cost and fee sharing arrangement and each is satisfied with the time and effort the other has contributed to the cases.

3. Mr. Schrinar's primary role included: (1) liaison work with the named plaintiffs to acquire supporting documents and payment information and (2) review and compilation of lease documents. Mr. Schrinar has been a duly admitted and practicing member of the Wyoming State Bar since 1981. He has served as staff counsel for various oil and gas companies, served as an assistant attorney general for the State of Wyoming (primarily with respect to securities law and other matters within the jurisdiction of the Wyoming Secretary of State), and as Wyoming Commissioner of Public Lands for 11 years. In the latter capacity, he had responsibility for the supervision and administration of the leasing and royalty collection for state lands. Mr. Schrinar has subsequently provided legal services to clients in the Powder River Basin with respect to their coal bed methane leases.

To date, neither plaintiffs nor counsel have been reimbursed for any of the costs incurred.

13. Counsel has purposely reduced the fee request from the 30% provided in the retainer agreements with the named plaintiffs to 15% (the requested attorney fees is in fact less, since the request includes costs and expenses) because the degree of cooperation and information provided by Berry under the confidentiality agreement significantly reduced the time and effort involved. Counsel's contracts with the named plaintiffs are contingent fee contracts entitling counsel to 30% of net recovery. While this Court is not bound by these agreements in determining what is a necessary and reasonable fee, they clearly evidence what counsels' services are worth and what their justified expectations were prior to suit. The requested fee is less than the amounts under Rule 5 of the Rules Governing Contingent Fees for Members of the Wyoming State Bar which ". . . shall be presumed reasonable and not excessive."

14. Because of the demands of these cases, counsel has maintained a reduced caseload with respect to other matters.

15. The risks inherent in a contingent fee case is substantial. The prosecution of these cases posed and still pose substantial risks, in light of the continuing uncertainties and unresolved issues surrounding the WRPA. Ultimate success and recovery of any fee is fraught with uncertainty.

16. In light of the foregoing, it is my opinion that the requested fees and costs are fair and reasonable.

Further Affiant sayeth naught.

DATED this 22nd day of November, 2011.

Steven F. Freudenthal
Steven F. Freudenthal

STATE OF WYOMING)
) ss.
COUNTY OF LARAMIE)

Before me, Heather L. Kammerman, Notary Public in and for Laramie County, State of Wyoming, personally appeared Steven F. Freudenthal, and he being first duly sworn by me upon his oath, says that the matters alleged in the foregoing instrument are true.

Witness my hand and official seal.

Dated this 22nd day of November, 2011.

Heather L. Kammerman
Notary Public

My Commission Expires: July 22, 2014



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)
BERRY PETROLEUM COMPANY,)
a Delaware corporation)
)
Defendant.)

AFFIDAVIT OF JOHN B. "JACK" SPEIGHT
(Berry)

COMES NOW John B. "Jack" Speight and being duly sworn states that:

1. I am a person of legal age, under no legal disability, and have been a duly admitted and practicing member of the Wyoming State Bar since 1966.

2. With my prior law firm I reviewed class action settlements similar in structure to the settlement proposed in the captioned matter on behalf of a client who has a substantial oil and gas

royalty interests as a current royalty payee under the proposed settlement agreement.

3. I am an experienced plaintiff's attorney and have studied and applied both the law and practice with regard to evaluating attorney fees and costs in contingency fee cases, including those involving the concept of a "common fund" and a "percentage of the fund."

4. Under the proposed settlement, the requested award for attorneys fees and costs is fifteen percent (15%) of the aggregate settlement amount. From this amount, plaintiffs counsel will pay or be reimbursed for costs, expert expenses, and expenses of settlement administration.

5. Whether applying the "lodestar method" or the "percentage of the fund method," the requested award of fifteen percent for attorneys fees and costs is reasonable in light of the applicable factors:


- a. The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- b. The likelihood that the acceptance of the particular employment precluded other employment by the lawyer;
- c. The fee customarily charged in the locality for similar legal services;
- d. The amount involved and the results obtained;
- e. The time limitations imposed by the client or by the circumstances;
- f. The nature and length of the professional relationship with the clients;

- g. The experience, reputation and ability of the lawyer or lawyers performing the services; and
- h. Whether the fee is fixed or contingent.

6. In reaching my conclusion, I have placed the most emphasis on (a) the time and labor required with respect to the difficulty of developing a knowledge and understanding of the underlying accounting system and agreements; (b) the preclusion of other employment by undertaking this type of case; (c) the fee customarily charged in Wyoming for similar services (generally 30%); (d) the amount involved and results obtained; and (e) the contingent nature of the fee.

Further Affiant sayeth naught.

DATED this 22 day of November, 2011.



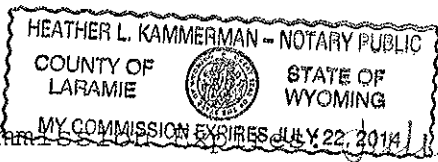
 John B. "Jack" Speight

STATE OF WYOMING)
) ss.
 COUNTY OF LARAMIE)

Before me, Heather L. Kammerman, Notary Public in and for Laramie County, State of Wyoming, personally appeared John B. "Jack" Speight, and he being first duly sworn by me upon his oath, says that the matters alleged in the foregoing instrument are true.

Witness my hand and official seal.

Dated this 22nd day of November, 2011.



Heather L. Kammerman
 Notary Public

My Commission Expires July 22, 2014