

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF LOUISIANA

IN RE:

LOUISIANA SAFETY ASSOCIATION OF  
TIMBERMEN—SELF INSURED FUND

CASE NO. 15-81004

DEBTOR

CHAPTER 7

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T. BRETT BRUNSON AS TRUSTEE FOR  
LOUISIANA SAFETY ASSOCIATION OF  
TIMBERMEN—SELF INSURED FUND

ADV. PROC. NO. 17-08003

vs.

ASCENSION READY MIX, INC., O'NEALGAS, INC.,  
E.A. HINTON WELL SERVICING INC., and  
ALFORD MOTORS, INC.  
(On behalf of themselves  
and others similarly situated)

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**MEMORANDUM IN SUPPORT OF CLASS COUNSEL'S MOTION FOR AWARD OF  
ATTORNEYS' FEES AND LITIGATION EXPENSES**

Pursuant to Fed. R. Civ. P. 23, W.L. West and Roedel, Parsons, Blache, Fontana, Piontek & Pisano, APC ("Roedel Parsons") and William E. Steffes and The Steffes Firm, LLC ("Steffes"; and, together with Roedel Parsons, "Class Counsel"), attorneys for the defendant class ("Class"), respectfully submit this memorandum in support of their *Motion for Award of Attorneys' Fees and Litigation Expenses* ("Fee Motion") in defending and resolving the above-captioned adversary proceeding ("Class Action"). All capitalized words not defined herein shall have the meaning ascribed to them in the Settlement.

## PRELIMINARY STATEMENT

The proposed Settlement<sup>1</sup>, if granted final approval by the Court, will resolve the Class Action in its entirety by permitting members of the Class to be released of all liability asserted through the Class Action by paying an amount which is significantly lower than the \$40 million solidary obligation originally asserted by the Trustee against each Class member. The Settlement represents a very favorable result for the Class because it provides both certainty with respect to each Class member's liability and a substantial discount of the potential liability of each Class member.

In order to achieve this Settlement, Class Counsel undertook significant efforts in defending the Class against the Trustee's claims, including by, among other things, (a) conducting initial investigation of claims and potential liability of Class members, including extensive discovery; (b) conducting a meaningful analysis of advantages and disadvantages of proceeding with defense of the Trustee's claims through a class action proceeding; (c) active participation in the settlement ("Jonesboro Settlement") reached between the Trustee and Jonesboro Bank, which settlement generated an initial advance of \$300,000 for attorneys' fees for the Class' defense; (d) conducting substantial informal discovery related to scope and extent of potential liability of Class members; (e) exerting considerable efforts to reduce Class liability through active participation in the claims administration process of the above-captioned chapter 7 case ("Chapter 7 Case"), including working with the Trustee in connection with his objections to claims filed in the Chapter 7 Case ("Proofs of Claim") as well as independently prosecuting objections, on behalf of the Class, to Proofs of Claim, which claims form the basis of the liability asserted against the Class; (f) communicating extensively with numerous attorneys for Class members following notification of

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<sup>1</sup> Doc. 230-4

the Certification Order; (g) conducting a rigorous analysis of the Trustee's expert's reporting related to Class liability, including performing a thorough, independent analysis of potential liability of the Class; (h) consulting with an expert in the field of self-insurance funds regarding potential liability of Class members; and, (i) participating in extensive arms-length negotiations with the Trustee's counsel regarding Class liability, methodology for determination thereof, and various substantive and procedural settlement terms.

As set forth above, the Jonesboro Settlement provided the Class with initial funding for defense of the Class Action claims; however, pursuant to that settlement, Jonesboro Bank is entitled to reimbursement from funds recovered by the Trustee from Class members through the Class Action. Consistent therewith, the Settlement provides for Class members to share responsibility for Class Counsel's fees in proportion to the claims liability assessed among each other. This provision follows the general rule that, in the absence of bad faith, each party to a lawsuit must bear its own costs and expenses. *In the Matter of Jack/Wade Drilling Inc.*, 258 F.3d 385 (5th Cir. 2001).

In light of the favorable result obtained for the Class, the time and effort devoted by Class Counsel to the Class Action, the skill and expertise required, the quality of work performed, and the partially contingent nature of the representation, Class Counsel respectfully submit that the Fee Award requested through the *Fee Motion* is reasonable and should be approved. Finally, the costs and expenses incurred by Class Counsel are reasonable in amount and were necessarily incurred in the favorable settlement reached on behalf of the Class in the Class Action; and, thus, such costs and expenses should likewise be approved.

#### **I. FEE AND EXPENSE AWARD REQUESTED**

Prior to Class Certification and appointment as Class Counsel on August 22, 2018, Roedel

Parsons and Steffes jointly represented named class representatives, E. A. Hinton Well Servicing, Inc., The Bank, O'Neal Gas, Inc. and Alford Motors, Inc. All pre-certification services provided by Class Counsel to the named class representatives ultimately benefitted the Class as a whole. The tasks undertaken prior to Class Certification included consideration of: whether the Trustee's Complaint and the facts as determined through counsel's initial investigation met the requirements of Rule 23 of the Federal Rule of Civil Procedure for certification of a defendant class; whether the class action, if maintained, should proceed in bankruptcy court or federal district court; the procedural and substantive differences between plaintiff and defendant class actions and how those differences could impact the defendants; the appropriateness of possible subclasses; possible limitations on or defenses to solidary liability under applicable state law; possible defenses for fund members under various agreements between the Louisiana Association of Timbermen Self-insurers Fund and its members and applicable insurance regulations; the procedures followed in other self-insurance fund failure cases, particularly in bankruptcy proceedings; and, procedures and/or resources needed to evaluate workers' compensation claims. The aforementioned class representatives incurred legal fees and costs for such services for the benefit of class members through August 22, 2018.

Class Counsel has maintained time entries for hourly work performed and reasonable expenses incurred from inception of the Class Action; and, has included such entries through May 31, 2022<sup>2</sup> in the supporting documentation attached to the *Fee Motion*. As of the filing of the *Fee Motion*, the amounts advanced by Jonesboro Bank have been exhausted<sup>3</sup>. Based upon the requirements for Settlement approval and the numerous inquiries and responses of Class members

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<sup>2</sup> See *Steffes Declaration*, attached to the *Fee Motion* as Exhibit A; and, *West Affidavit*, attached to the *Fee Motion* as Exhibit B.

<sup>3</sup> At the time of the filing of the *Fee Motion*, approximately \$42,000 in fees and expenses remain unpaid to Class Counsel.

directed to Class Counsel following notice of the *Certification Order*, Class Counsel anticipate that a significant amount of work may potentially be required through the end of the settlement approval process and up to the Trustee's payment demand being delivered to Class members. Class Counsel believe their current unpaid amounts due for services and expenses together with future services likely to be rendered and expenses likely to be incurred will total no more than \$200,000. Thus, Class Counsel request this Court's approval for payment of total fees and expenses from the Settlement Funds as collected up to a maximum amount of \$200,000 ("Fee Award"); to the extent that current unpaid amounts due and fees and expenses for future work total less than \$200,000, the excess shall be retained in the Settlement Fund. Further, Class Counsel requests that, in accordance with the terms set forth in the proposed *Final Order and Judgment Approving Settlement* [Doc. 230-4, pp.261-268], they be paid the amount of all unpaid fees and expenses incurred through the date the *Fee Motion* is granted; and, that any fees and expenses incurred thereafter be paid by the Trustee from the Settlement Fund upon receipt of Class Counsel's certification of fees and expenses then due. Under the terms of the Settlement, any remaining funds held by the Trustee in the Settlement Fund shall be refunded to Class members once all payments have been made in accordance with the Settlement.

Although, through the *Fee Motion*, Class Counsel is only seeking an award or payment of fees and expenses not to exceed \$200,000, pursuant to the Settlement, Class Counsel also requests that this Court approve all fees and expenses incurred on behalf of the Class from commencement of the Class Action. The Fee Award and all other fees and expenses approved by the Court through the *Fee Motion*, up to a maximum amount of \$500,000, shall be included in the Payment Amounts<sup>4</sup> due by Class members under the Settlement. Pursuant to the Settlement terms, those Payment

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<sup>4</sup> Class member liability for Class Counsel fees ranges from approximately \$1 to \$880, depending on the year(s) in which the Class member was a member of the Fund.

Amounts remitted to the Trustee shall be deposited into the Settlement Fund and distributed in accordance with the terms of the Settlement, including for payment of the Fee Award and reimbursements due to Jonesboro Bank under the Jonesboro Settlement and due to Class Representatives for fees and expenses advanced for defense of the Class Action.

**A. The Requested Fees Are Reasonable Under the Johnson Factors**

On August 22, 2018, this Court entered the Certification Order, through which Roedel Parsons and Steffes were appointed as co-Class Counsel. Through the *Fee Motion*, Class Counsel seek (a) for purposes of seeking reimbursement from the Class pursuant to the Settlement, Court approval of all attorneys' fees and expenses, for services rendered and expenses incurred from March 23, 2017 through May 31, 2022 ("Initial Fee Period"); and, (b) approval for payment to Class Counsel, from the Settlement Fund, of all unpaid fees and expenses incurred during the Initial Period and for all fees and expenses incurred or to be incurred following June 1, 2022 in an amount not to exceed \$200,000.

Class Counsel show that the following factors, under *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974), are to be considered in awarding fees in this case:

a) **Time and Labor Required**: Class Counsel have attached to the *Fee Motion* an itemization of the time spent for services rendered from March 23, 2017 through May 31, 2022. Class Counsel unquestionably devoted a substantial amount of time on this Class Action, dedicating a total of over 1,900 hours of professional time since 2017. *See Steffes Declaration and West Affidavit.*

b) **Novelty and Difficulty of the Questions**: In *Johnson*, the Fifth Circuit recognized:

"Cases of first impression generally require more time and effort on the attorney's part. Although this greater expenditure of time in research and preparation is an investment by counsel in obtaining knowledge which can be used in similar later cases, he should not be penalized for undertaking a

case which may ‘make new law.’ Instead, he should be appropriately compensated for accepting the challenge.” *Johnson*, 488 F.2d at 718.

While, in general, class actions represent complex litigation, the complexities of a defendant class action, such as the instant Class Action, are even greater. As noted by the Fourth Circuit, defendant class actions are “one of the rarest types of complex litigation” and “are so rare they have been compared to ‘unicorns.’” *Bell v. Brockett*, 922 F.3d 502, 504 (4th Cir. 2019), citing *CIGNA HealthCare of St. Louis, Inc. v. Kaiser*, 294 F.3d 849, 853 (7th Cir. 2002). Accordingly, during the course of the Class Action, several unique factual and legal questions have been presented by this case including, but not limited to, the following:

- (1) determining and coordinating with the Trustee regarding procedures to comply with due process requirements;
- (2) examining the appropriateness of class certification;
- (3) evaluating the advantages and disadvantages for the Class of proceeding with the defense of the Trustee’s claims through a defendant class action;
- (4) analyzing the extent and scope of potential liability of participants of a self-insurance fund, for which limited regulatory guidance and structure were available;
- (5) analyzing the potential liability of the Class members in the Class Action, which analysis involved novel issues of both state and bankruptcy laws;
- (6) negotiating and developing terms for settlement of the Class Action, which given the nature of this defendant Class Action, involved a multitude of substantive and procedural hurdles; and,
- (7) drafting, with the Trustee, comprehensive pleadings, notices and other documents related to the Settlement and approval thereof.

c) **The Skill Requisite to Perform Legal Services Properly:** Services rendered by Class Counsel were performed primarily by William E. Steffes and Barbara B. Parsons of Steffes and W.L. West of Roedel Parsons. In its appointment of Roedel Parsons and Steffes as Class Counsel, the Court considered the experience of Class Counsel under the elements of Rule 23(g) and found both firms to be well qualified. *Certification Order, Memorandum Opinion [Doc. 142]*. The skills and experience of Class Counsel are set forth in the *Steffes Declaration* and the *West Affidavit*.

d) **The Preclusion of Other Employment Due to Acceptance of the Case:** While Class Counsel's representation of the Class has not precluded their acceptance of new clients, certain matters have required a substantial devotion of time and resources, thereby requiring Class Counsel to limit work on other matters for other clients.

e) **The Customary Fee:** The fees charged by Class Counsel are consistent with or lower than reasonable and customary hourly rates charged by other professionals of equal education and experience, and in matters of similar complexity, scope, and significance.

f) **Whether the Fee is Fixed or Contingent:** Class Counsel were appointed as counsel to represent the defendant Class; and, they agreed to do so on an hourly fee basis, at rates customary for the work performed and to be reimbursed for actual, direct expenses. Although Class Counsel were provided with initial funding of \$300,000 through the Jonesboro Settlement, their fees are partially contingent since there is and can be no assurance that there will be funds available to pay outstanding amounts due to Class Counsel in the event the Settlement is not approved or if sufficient funding does not become available.

g) **Time Limitations:** Class Counsel have had to perform certain services under strict time constraints given the date of engagement and the timing of certain motions and matters of



interest.

h) **Amount Involved and Results Obtained:** If the Settlement is approved, Class Counsel will have assisted Class members in significantly reducing their potential liability from the \$40 million claimed by the Trustee to a maximum liability under the Settlement of approximately \$12,800 per each settling member. Furthermore, the liability amount under the Settlement is fixed, unlike the uncertainty which would otherwise be associated with the potential judgment sought by the Trustee, i.e., judgment providing for solidary liability among thousands of Class members for the payment of \$40 million. In addition, payment accommodations for Class members whose liability exceeds \$6,000 under the Settlement were also negotiated by Class Counsel. Finally, under the Settlement, liability for attorneys' fees is shared ratably among Class members, thereby significantly reducing attorneys' fees which would otherwise be incurred by a Class member through its individual defense against the Trustee's Class Action claims.

i) **The Experience, Reputations and Ability of Applicants:** These factors are addressed in the *West Affidavit* and *Steffes Declaration*.

j) **The Undesirability of the Case:** The Class Action would likely have been undesirable to many law firms due to the uncertainty of payment, particularly prior to the Jonesboro Settlement; and, due to the complexities associated with a defendant class action and a self-insurance fund – both for which there is limited legal precedence.

k) **The Nature and Length of Professional Relationship:** The professional relationship with certain of the named class representatives began in approximately March 2017 and has continued through the date of this *Fee Motion*. All services by Class Counsel were rendered to and/or for the benefit of the Class.

**B. The Request for Approval of Litigation Expenses Is Warranted**

In addition to attorneys' fees, Class Counsel seek approval of litigation expenses incurred in the Class Action. As set forth in the *West Affidavit* and the *Steffes Declaration*, these litigation expenses total \$2,973.71. The expenses for which Class Counsel seek approval are all reasonable, necessarily incurred and directly related to defense of the Class Action. Expenses primarily include online legal research, copying costs, postage, and PACER charges. All such expenses are customarily reimbursed in litigation matters such as the Class Action.

**CONCLUSION**

Class Counsel has demonstrated through the *Fee Motion*, including this Supporting Memorandum, the *Steffes Declaration* and the *West Affidavit*, that Class Counsel's fees and expenses incurred in the Class Action are fair and reasonable and should be approved. Accordingly, Class Counsel respectfully request that the *Fee Motion* be granted and that the Court enter an order: (1) approving, for purposes of Class reimbursement pursuant to the Settlement, all attorneys' fees and expenses of Class Counsel, for services rendered and expenses incurred from March 23, 2017 through May 31, 2022 ("Initial Fee Period"); and, (b) approving payment to Class Counsel of a total amount not to exceed \$200,000, from the Settlement Fund, all unpaid fees and expenses incurred during the Initial Period and all fees and expenses incurred or to be incurred following June 1, 2022.

Respectfully submitted,

By: /s/ Barbara B. Parsons

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