

<p>COLORADO COURT OF APPEALS 2 East Fourteenth Avenue, Suite 300 Denver, CO 80203</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>(Appeal from)</p> <p>DENVER COUNTY DISTRICT COURT COLORADO Denver City and County Building 1437 Bannock Street Denver, CO 80202 Judge John W. Coughlin, Courtroom 1 Case Number 00-CV-4142</p>	
<p>Plaintiffs: ADELE BRODY, et al., On Behalf of Themselves and All Others Similarly Situated,</p> <p style="text-align: center;">vs.</p> <p>Defendants: PETER S. HELLMAN, JERRY COLANGELO, SOLOMON D. TRUJILLO, MANUEL A. FRANANDEZ, DR. CRAIG R. BARRETT, FRANK P. POPOFF, MARILYN CARLSON NELSON, HANK BROWN, GEORGE J. HARAD, LINDA G. ALVARADO, QWEST COMMUNICATIONS INTERNATIONAL, INC. and JOSEPH P. NACCHIO,</p>	<p>Denver District Court Case Number: 00-CV-4142 Courtroom 1</p> <p>Colorado Court of Appeals Case Number: 05-CA-2017</p>
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<p>PLAINTIFFS-APPELLEES' ANSWER BRIEF</p>	

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I. INTRODUCTION

The sole issue on this appeal is whether it was patently erroneous for the trial court to award a 30% fee and \$1.3 million in expenses to class counsel for their work in this case.¹ A simple review of the trial court's careful analysis of the reasonableness of the award based on the record, fees in similar cases, governing law and the court's own experience with the case and counsel compels only one conclusion: the court's judgment was well-founded and should be affirmed.

This appeal follows five years of aggressive litigation involving vigorously disputed factual and legal issues that remained unresolved through the eve of trial; three summary judgment motions and a motion to dismiss; thirty-six depositions of fact and expert witnesses taken across the country; complex class certification issues requiring a one and one-half day evidentiary hearing and the testimony of five experts; complex legal and damages issues requiring the parties to retain seven liability and damages experts, who were fully prepared to testify at trial; and complete trial preparation, including preparation of witness examinations and demonstrative

¹ The law firms Lerach Coughlin Stoia Geller Rudman & Robbins LLP, Dyer & Shuman LLP, Milberg Weiss Bershad Hynes & Schulman LLP and Weiss & Lurie, are referred to as "counsel" or "class counsel."

exhibits, and relocating plaintiffs' entire trial team to Denver two weeks prior to trial. The fee awarded by the trial court is clearly supported by the work done by counsel.

The fee is also supported by the risks that faced plaintiffs throughout this case. This litigation arose out of Qwest Communications International, Inc.'s ("Qwest") controversial refusal to pay a \$274 million dividend declared by US West, Inc. ("US West") prior to the two companies' June 30, 2000 merger. Much controversy also surrounded US West's declaration of the dividend, as it first announced on June 5 that the dividend would be paid to shareholders of record as of June 30 and, after a complaint from Qwest, claimed that July 10 was in fact the correct record date. Because the July 10 date ultimately post-dated the merger, it also served as a defense: defendants claimed that the dividend was not owed because there were no US West shareholders of record on July 10. Plaintiffs, on the other hand, maintained that the record date was June 30, but that Qwest was obligated to pay the dividend to former US West shareholders regardless of which date was correct.

These two dispositive issues, which record date was correct and whether Qwest was obligated to pay the dividend, remained unresolved through the eve of trial and created a high degree of risk for plaintiffs going into trial: no legal authority from any jurisdiction in the United States was directly on point with this case, and while every US West director insisted that July 10 was the record date they declared, one smoking

gun document and the testimony of an in-house lawyer at US West flatly contradicted them. Compounding these legal and factual quagmires, the class' damages were likewise hotly contested. Plaintiffs claimed that the class' damages were the amount of the dividend, while defendants' damages expert would testify that the class' true damages were, at best, less than half the amount of the dividend based on complex economic theories. Thus, after five years of aggressive and risk-besought litigation, plaintiffs faced the risk of losing on liability at trial, or proving liability but not their claimed damages.

Being intimately familiar with these risks and others, plaintiffs and defendants agreed to settle the case for \$50 million on the eve of trial.

The trial court, also intimately familiar with the material issues and the risks facing both sides going into trial, found not only that the settlement was "fair, adequate and reasonable" (26 Rec. 59:17), but that it was "a great result." (26 Rec. 62:4.)² The class members agreed. Only eight objectors, representing .00001% of the class, came forward. Of these objectors, only Mary M. Hull, Eldon H. Graham, Hazel A. Floyd and the Association of US West Retirees ("Objectors") have appealed.

² Citations to the record ("__ Rec. __") refer to the volume and page number, and where applicable, the line number. "AOB" refers to Appellants' Opening Brief.

Significantly, Objectors have never contested the fairness or reasonableness of the settlement itself. Indeed, their counsel agreed that the settlement was “a great result” (26 Rec. 13:14), and that class counsel are entitled to a “substantial” fee. (AOB 18.) Objectors challenge only the trial court’s fee and expense award, insisting that a 30% fee is excessive even though it is well within the range of fees granted in similar cases. Objectors also disregard that in determining the reasonableness of the fee, the trial court expressly considered the factors set forth in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974) and in Rule 1.5 of the Colorado Rules of Professional Conduct, which are designed to guide the courts’ award of fees. (AOB 14-15, 20; 26 Rec. 62:13-65:8.)

Objectors have also acknowledged the determined efforts of class counsel to prevail in this case. (*See, e.g.*, 26 Rec. 4:22-24, 9:12-14, 13:4-5, 9.) They do not dispute that such efforts required the commitment of substantial funds. Nevertheless, Objectors “nitpick” (in their word) over some of the expenses reimbursed, while citing no authority requiring class counsel to more fully document these expenses. Nor do Objectors offer any facts supporting their derogatory speculation that some of these costs were unjustifiable.

Trial courts indisputably have broad discretion to award reasonable fees and expenses as the circumstances of each case warrant. *Employment Television Enters.*

LLC v. Barocas, 100 P.3d 37, 51 (Colo. Ct. App. 2004). Objectors have failed to demonstrate any abuse of that discretion here. Their complaints have no substance, and have served only to delay the distribution of settlement funds to the class. This Court should not hesitate to affirm the trial court's order.

II. STATEMENT OF THE CASE

A. The Nature of the Action

1. Events Underlying the Litigation

This action arose from events surrounding the June 30, 2000 merger of US West and Qwest. (22 Rec. 5023.) On June 5, 2000, US West announced that at a June 2, 2000 meeting, its Board of Directors had declared a regular dividend for the second quarter of 2000, payable on August 1, 2000, to shareholders of record as of June 30, 2000. (22 Rec. 5026-27.) In a letter dated June 6, 2000, Qwest's CEO, Joseph Nacchio, demanded that US West either rescind the dividend or set a record date of July 10 or later, as it had done in years past. (22 Rec. 5027.) On June 7, 2000, US West announced that the June 30 record date was incorrect, and that the actual record date was July 10, 2000. (22 Rec. 5027.) The merger closed on June 30, 2000, and the dividend was never paid. (22 Rec. 5027.)

Based on US West's revision of the record date, plaintiff Adele Brody ("Brody") filed a complaint on June 21, 2000 alleging breach of contract and breach

of fiduciary duty claims on behalf of a class of US West shareholders. (1 Rec. 1-14.) An amended complaint was filed on January 8, 2001 by Brody and Employer-Teamsters Local Nos. 175 and 505 Pension Trust Fund (the "Fund") (Brody and the Fund are referred to herein as "plaintiffs"). (1 Rec. 72-89.) The amended complaint alleged events that occurred subsequent to the filing of the original complaint, such as completion of the merger and non-payment of the dividend. (1 Rec. 76-77, 81-83.)

2. Plaintiffs' Claims Rested on a Number of Vigorously Contested Factual and Legal Issues

Plaintiffs' claims posed two strongly disputed legal questions: Whether Qwest had breached a contractual obligation to pay the dividend; and whether the US West director defendants had breached their fiduciary duties to stockholders by failing to ensure payment of the dividend. (22 Rec. 4968-50, 5056.)

Plaintiffs' claims also raised the issue of which record date was correct – June 30 or July 10. (22 Rec. 4968-69, 5055.) Plaintiffs alleged that the correct record date was June 30, 2000. Their position was supported by an executed Certified Resolution of the Board which set June 30 as the record date; and the testimony of US West's Associate General Counsel who prepared the Resolution based on representations made by the company's General Counsel, who had attended the June 2 meeting. (22 Rec. 5025-26.) Defendants, on the other hand, insisted that the Resolution was erroneous, and that the date set by the Board at the June 2 meeting

was July 10. Their position was supported by the testimony of every director present at the meeting. (22 Rec. 5055.)

Defendants also contended that they had no obligation to pay the dividend because the July 10, 2000 record date fell after the merger closed, and there were no US West shareholders of record on that date. (22 Rec. 5056.) Plaintiffs maintained that even if July 10 was the correct record date, the announcement of the dividend created a contractual obligation to pay it that survived the merger. (22 Rec. 5035.)

The damages alleged by the class were also firmly disputed by defendants. Plaintiffs alleged that the class' damages equaled the amount of the dividend, or over \$270 million in the aggregate. (1 Rec. 82-82.) Defendants countered that, if they were liable at all, damages were less than half of that amount because if Qwest had paid the dividend, the Qwest stock held by former US West shareholders after the merger would have been worth much less. Thus, defendants argued, the non-payment of the dividend greatly reduced any alleged damages by increasing the value of Qwest stock held by the class. (22 Rec. 4970-71, 5057.)

3. Class Counsel Dedicated a Tremendous Amount of Time, Resources and Skill to the Prosecution and Resolution of This Case

Class counsel dedicated tremendous resources in time and money to the prosecution of this case. The extent of their commitment is set forth in great detail in

the Declaration of Laura Andracchio (“Andracchio Declaration”), submitted in support of final approval of the settlement and counsel’s fee application, and will only be summarized briefly here. (22 Rec. 5013-72.) Objectors never challenged this showing of counsel’s extensive efforts, nor did they question the skill and commitment counsel demonstrated throughout this litigation.

After filing the initial complaint, class counsel sought to impose a constructive trust based on their claim that the correct record date was June 30, 2000. Defendants opposed, and the motion was denied. (22 Rec. 5028.) Once the amended complaint was filed, defendants promptly moved for its dismissal, or alternatively, for partial summary judgment. Plaintiffs successfully opposed that motion. (22 Rec. 5029-30.)

Plaintiffs thereafter commenced discovery, obtaining and reviewing documents from defendants and third parties and moving to compel withheld documents. (22 Rec. 5030-34.) After document productions were substantially complete, class counsel conducted 23 depositions of defendants and third parties across the country, which required a substantial commitment of time and travel-related expenses. (22 Rec. 5033-34.)

Following the close of merits discovery, defendants renewed their motion for summary judgment focusing on the record date dispute. Plaintiffs opposed that motion, and filed their own summary judgment motion arguing that a contractual

obligation arose when the dividend was announced, regardless of whether the record date was June 30 or July 10. The court denied both motions. (22 Rec. 5035-36.)

Thereafter, plaintiffs moved for class certification. Defendants aggressively opposed this motion, submitting two complex expert opinions in support of their opposition. (22 Rec. 5036, 5038.) The parties then engaged in substantial discovery related to class certification. Defendants deposed Brody and David R. Atkins, a representative of the Fund, and the outside money manager for the Fund. (22 Rec. 5037-38.) Class counsel deposed defendants' two experts and retained several consulting and testifying experts to support class certification. (22 Rec. 5038-39.)

The trial court held a one and one-half day evidentiary hearing on plaintiffs' class certification motion, at which five experts' testimony and oral argument were presented. (22 Rec. 5040-41.) Following the hearing, the court granted class certification, and the parties proceeded to prepare for trial. (22 Rec. 5041.)

As the parties prepared for trial, they began to discuss the possibility of settlement. In March and April 2005, they held two settlement conferences and participated in follow-up discussions with a mediator, the Honorable Layn R. Phillips, former United States District Judge for the Western District of Oklahoma. (22 Rec. 5058.)

In preparation for trial, class counsel retained additional experts on liability and damages. (22 Rec. 5043-47.) Seven trial experts on both sides were deposed. In connection with those depositions, counsel reviewed nearly 67,000 pages of documents produced by defendants' experts. (22 Rec. 5046-47.) Counsel also prepared the Trial Management Order, a time-consuming task requiring several weeks to complete. (22 Rec. 5047.) Class counsel also submitted and argued numerous pretrial motions and spent months preparing exhibits, witnesses, examinations and an opening statement. (22 Rec. 5048-54.) The trial team, including lawyers, support staff and information technology personnel, relocated to Denver over two weeks ahead of the trial for final trial preparations. (22 Rec. 5054.)

In sum, class counsel and their paraprofessionals spent 15,770 hours working on this case, and incurred about \$1.3 million in out-of-pocket costs. (22 Rec. 5063.) These are documented in the declarations submitted by counsel's firms to the trial court in support of their application for fees and expenses. (23 Rec. 5122-5290.) Counsel did not receive any compensation for their work or reimbursement of their expenses during the five-year course of litigation. (22 Rec. 5070.)

B. The Trial Court's Approval of the Settlement and Its Award of Fees and Expenses Was Carefully Considered, Sound and Well Within Its Discretion

On the business day before the trial was to begin, the parties reached a settlement for \$50 million in cash (with accumulated interest). (20 Rec. 4654; 22 Rec. 5059.) The settlement also provides that attorneys' fees, expenses and costs will be paid out of the settlement fund. (20 Rec. 4662.) The settlement was supported by both plaintiffs. (20 Rec. 4643; 22 Rec. 5022, 5111.)

On June 24, 2005, the trial court preliminarily approved the settlement and the form and manner of notice to the class. At class counsel's expense, notice was sent to 763,333 class members. (22 Rec. 5070.) Only eight individuals objected to the settlement or fee request, and no institutional investor did. (22 Rec. 5070-71.)

At the August 30, 2005 hearing on final settlement approval, the trial judge, the Honorable John W. Coughlin, heard argument from counsel for the parties, as well as counsel for Objectors. (26 Rec. 1-59.) Objectors' counsel acknowledged that class counsel had "worked hard," had achieved a "great" result for the class, and deserved to be "paid well" for their efforts. (26 Rec. 4:24, 9:11, 13:14.) Nevertheless, he insisted that a 30% fee was excessive and that class counsel had not adequately documented their expenses. (*See, e.g.*, 26 Rec. 5:2, 7:4-6.)

The trial court disagreed. The court first concluded that it was “very confident and very secure in saying that this settlement is fair and reasonable.” (26 Rec. 62:11-12.) Judge Coughlin explained in detail the basis for his decision, emphasizing the challenging factual and legal hurdles that plaintiffs had to overcome to succeed at trial on both liability and damages. (26 Rec. 59:15-61:24.) He also noted that “there isn’t anybody here today that says the result wasn’t anything but great.” (26 Rec. 64:10-11.)

Turning to counsel’s fee and expense application, the trial court analyzed the fee award expressly in light of the factors outlined in *Johnson*, 488 F.2d at 717-19. (26 Rec. 62:13-64:23.) The court determined 30% to be a reasonable fee, finding that the time and labor involved in litigating this case was “astronomical,” and that the skill required to perform the legal services was “extreme.” (26 Rec. 63:8, 17.) In addressing the difficulty and undesirability of the case, the court emphasized that class counsel stepped forward to prosecute this action on a contingent basis when no one else did, notwithstanding the difficult issues underlying the claims and the “well-prepared and extremely, extremely talented” opposition. (26 Rec. 63:19-20.) “There wasn’t any other lawyer in the United States that brought this lawsuit . . . that took the gamble these people did Nobody did.” (26 Rec. 62:22-63:3.) The court noted it “had the opportunity to watch these attorneys throughout [the litigation] and the

ability is terrific. The experience and the reputation speaks for itself.” (26 Rec. 64:13-16.)

The trial court further concluded that the requested percentage fee was customary and in line with fee awards in other cases, observing that “30 percent has long been considered a reasonable contingent fee.” (26 Rec. 63:25-64:1.) The court based this finding on a host of cases in which a 30% fee was awarded to counsel in other class actions. The court also noted, “[t]his isn’t a coupon you take to Blockbuster to get 50 cents off. This is cash. And that cash would not have been obtained without these people doing what they did for five years.” (26 Rec. 65:5-8.)

Finally, the court rejected Objectors’ contention that it needed further documentation before approving the requested expenses, concluding that they were “reasonable and necessary.” (26 Rec. 65:14.) The court noted that counsel’s expenses consisted mostly of the costs of class notice and experts, which were not only necessary but “absolutely essential.” (26 Rec. 65:11-13.)

On August 30, 2005, the court entered its final judgment approving the settlement and class counsel’s request for fees and reimbursement of expenses. (25 Rec. 5702-09.) This appeal followed. (25 Rec. 5760.)

III. STANDARD OF REVIEW

“An award of attorney fees must be reasonable. A determination of reasonableness is a question of fact for the trial court and ‘will not be disturbed on review unless it is patently erroneous and unsupported by the evidence.’” *Spensieri v. Farmers Alliance Mut. Ins. Co.*, 804 P.2d 268, 270 (Colo. Ct. App. 1990) (quoting *Hartman v. Freedman*, 591 P.2d 1318, 1322 (Colo. 1979)). Although the trial court’s legal analysis underpinning a fee award is reviewed de novo, the appellate court will reverse the trial court’s factual findings “only if [it has] a definite and firm conviction that the lower court made a clear error of judgment or exceeded the bounds of permissible choice in the circumstances.” *Praseuth v. Rubbermaid, Inc.*, 406 F.3d 1245, 1257 (10th Cir. 2005).

Ultimately, an appellate court plays only “a ‘limited role’ in reviewing a [trial] court’s award of attorneys’ fees and costs, and deference is given to a [trial] court’s judgment on the matter, since the court is in a better position to assess the course of litigation and quality of work.” *Gamble, Simmons & Co. v. Kerr-McGee Corp.*, 175 F.3d 762, 773-74 (10th Cir. 1999) (citation omitted).³

³ Colorado Rule of Civil Procedure 23, which governs class action settlements and fee applications, is patterned after Federal Rule of Civil Procedure 23. For this

IV. SUMMARY OF ARGUMENT

The trial court's order awarding class counsel a 30% common fund fee should be affirmed. Objectors do not, and cannot, meet their burden to demonstrate that the trial court patently erred in awarding this fee. Their insistence that the fee award was "excessive" is entirely conclusory. Objectors point to no specific facts and offer no relevant legal authority demonstrating patent error in any aspect of the trial court's decision. Objectors also completely ignore the trial court's express analysis of the *Johnson* factors (which mirror Colorado's Rule 1.5) in light of the existing record and the court's own observations of counsel's conduct over the course of this lengthy litigation. Moreover, the fee is well within the range of fees awarded in similar class actions. In sum, Objectors' complaints regarding the 30% fee have no merit and the award should be affirmed.

Objectors also fail to substantiate their contention that the record contains insufficient documentation of counsel's expenses. Counsel supported their request for expenses with detailed descriptions of the expenditures and sworn statements of the case-related reasons for incurring these expenses. Moreover, the court itself witnessed the parties' tremendous commitment of resources during the course of this litigation.

reason, consideration of federal precedent is appropriate. *See, e.g., Air Comm'n & Satellite Inc. v. Echostar Satellite Corp.*, 38 P.3d 1246, 1251 (Colo. 2002).

The court therefore was in an excellent position to judge the credibility of counsel's submissions and the reasonableness of their expense request, and its decision to reimburse counsel for all of their expenses was therefore well supported. By contrast, Objectors offer nothing but speculation and irrelevant authority to support their assertions. The expense award should be affirmed.

V. ARGUMENT

A. The Trial Court Did Not Abuse Its Discretion in Awarding a 30% Fee Under the Circumstances of This Case

1. The Trial Court Properly Evaluated All Relevant Factors in Awarding the 30% Fee

In *Johnson*, the Fifth Circuit set forth the following factors to guide courts in their evaluation of a fee application: (1) the time and labor required; (2) the novelty and difficulty of the questions; (3) the skill required; (4) the preclusion of other employment; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation and ability of the attorneys; (10) the undesirability of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. 488 F.2d at 717-18. Colorado federal and state courts regularly employ these factors, which are virtually identical to those found in Rule 1.5 of the Colorado Rules of Professional Conduct. *See Uselton*

v. *Commercial Lovelace Motor Freight*, 9 F.3d 849, 853 (10th Cir. 1993); *Brown v. Phillips Petroleum Co.*, 838 F.2d 451, 454-54 (10th Cir. 1988); *Spensieri*, 804 P.2d at 271.

Objectors suggest that the court failed to consider the relevant *Johnson* factors in reaching its decision. (AOB 14, citing *Johnson*, 488 F.2d at 714.) To the contrary, Judge Coughlin examined every *Johnson* factor that applies to this case at the hearing on final settlement approval, as discussed below. (26 Rec. 62:13-64:16; see *Brown*, 838 F.2d at 456 (“rarely are all of the *Johnson* factors applicable” in a given case).)

After opining that a 30% fee was reasonable, the court also cross-checked its analysis against the lodestar method. (26 Rec. 64:17-23.) It determined that the requested fee represents a 2.3 multiplier, which is entirely reasonable in cases like this one which often command much larger multipliers. (*Id.*)

The trial court’s conclusions, summarized below, are more than sufficiently supported by the record and its own observations of counsel’s work during the course of this litigation.

a. The Time and Labor Involved, the Novelty and Difficulty of the Issues, the Contingency Risks Borne by Counsel and the Results Obtained

Judge Coughlin observed that resolution of the central issues in this case was never “clear cut.” (26 Rec. 63:11.) The disputed issue of the correct record date was

“very much up in the air” and was “extremely difficult for both sides.” (26 Rec. 59:25, 60:6-7.) The court also noted that there was no settled law clearly resolving the legal disputes of whether there was a contractual or fiduciary obligation to pay the dividend. (26 Rec. 60:10-20; *see* discussion, *supra*, at II.A.2.) These conclusions are fully supported by the record. (*See generally* 18 Rec. 4053-258; 19 Rec. 4259-489; 20 Rec. 4490-568; *see also* 26 Rec. 4957-61, 4968-71, 5055-58.)

Additionally, the trial court emphasized that even if plaintiffs prevailed on liability, they faced another pitched battle over the alleged damages. (22 Rec. 4970-71, 5057; 26 Rec. 61:15-24; *see* discussion, *supra*, at II.A.2.) Defendants argued that based on complex economic theories, the class’ damages were at most less than one half of the \$274 million that would have been paid if Qwest had honored the dividend. The trial would have entailed a classic “battle of the experts” regarding the class’s monetary losses, and the outcome was far from certain. (22 Rec. 5057; *see also* 26 Rec. 61:18 (court noted that defendants had a “good” damages theory).)

Judge Coughlin also recognized that the labor involved in this case was “astronomical.” (26 Rec. 63:8.) This conclusion, too, is well supported in the record. As the foregoing discussion demonstrates, class counsel aggressively litigated plaintiffs’ claims for five years against a determined and well-funded opposition. *See* discussion, *supra*, at II.A.3. Even the trial court was surprised that the parties were

able to reach a settlement, as it was convinced a trial was inevitable in view of the seemingly intractable legal and factual disputes. (26 Rec. 61:5-12.)

Objectors do not even attempt to refute the court's specific findings. Instead, they assert that the settlement "wasn't a total victory after a trial." (AOB 13.) But a settlement, by definition, is a compromise, and never a "total" win. *See, e.g., Class Plaintiffs v. Seattle*, 955 F.2d 1268, 1291-92 (9th Cir. 1992) (settlement is not an award of damages; it is a compromise to avoid the expense and uncertainty of litigation). Objectors' acknowledgment that this settlement is a compromise like most other class action cases in which fees are awarded does not satisfy their burden of demonstrating that the trial court's fee decision is "patently erroneous and unsupported by the evidence." *Newport Pac. Capital Co. v. Waste*, 878 P.2d 136, 140 (Colo. Ct. App. 1994).

The trial court also highlighted the significant risks facing class counsel, who handled this case on a contingency basis and received no compensation during the five years of litigation. As the court noted:

[T]he fact is they're asking for 30 percent after five years of struggling with the risk of getting zero. Do the shareholders want more? Absolutely. But they're fortunate they had some lawyers that had the guts to come forward and do it. It's easy to say that's too much money, but this is cash in the shareholder's pocket. . . . And that case would not have been obtained without these people doing what they did for five years.

(26 Rec. 64:24-65:8.)⁴ The \$50 million recovery for the class should be viewed through this prism. *See Brown*, 838 F.2d at 456 (the results obtained “may be given greater weight when, as in this case, the trial judge determines that the recovery was highly contingent and that the efforts of counsel were instrumental in realizing recovery on behalf of the class”).

Because Objectors have presented no facts or argument to dispute these conclusions of the trial court, the fee order should be affirmed.

b. Counsel’s Experience and Reputation, and the Skill Required and Demonstrated

Objectors do not dispute that the difficult issues presented by plaintiffs’ claims required a high level of skill, and that class counsel are highly regarded and demonstrated the requisite level of skill in litigating this case. As the trial court concluded:

The skill required to perform the legal services was extreme. . . . The Plaintiffs’ Counsel faced Defense Counsel that were equally well-prepared and extremely, extremely talented. There wasn’t any issue that wasn’t fought. It took a great deal of skill to get to the point of trial.

⁴ There is also no question that class counsel were required to forego other employment in light of their commitment to this case over five years, and especially as they geared up for trial. (26 Rec. 63:22-24 (“when you put this much time into an effort for five years, obviously, other employment is precluded”).

(26 Rec. 63:16-21.) The court based these conclusions in part on its personal observations of counsel's work. (26 Rec. 64:13-15 ("I had the opportunity to watch these attorneys throughout this period of time when I had this case and the ability is terrific"); see *Brown*, 838 F.2d at 455 (the trial court's observations place it in a "unique position" to evaluate counsel's skill and the level and quality of work involved).)

Again, Objectors offer no serious challenge to these findings, nor can they. Instead, they attempt to undermine the trial court's conclusions by insinuating that counsel might have spent unnecessary hours on this case. Their contention is based on nothing more than speculation that plaintiffs had a duty to scrutinize class counsel's monthly time records and failed to do so. The trial court, they insist, should have then done so. (AOB 15.)

Objectors' complaint is utterly baseless. First, it should be noted that Objectors do not challenge the trial court's use of the percentage method (as opposed to the lodestar method) for calculating the fee, nor could they, as that is the preferred method in complex class actions. See, e.g., *Gottlieb v. Barry*, 43 F.3d 474, 487 (10th Cir. 1994). Objectors also do not take issue with the court's lodestar cross-check. Objectors' fixation on class counsel's time records, then, is little more than a diversionary tactic.

Second, there is no basis for Objectors' assertion that plaintiffs failed to diligently perform their role as class representatives. (AOB 21.) On the contrary, it is apparent from Brody's declaration, submitted to the trial court, that she was actively involved in this litigation and kept herself well apprised of the work counsel was performing. She reviewed counsel's work at every stage of the litigation, from the filing of the complaints, through the summary judgment and class certification motions, to trial preparation and, finally, the settlement. She was deposed and prepared as a trial witness, and participated in settlement negotiations. (22 Rec. 5111.)

The Fund also actively participated in this case. Objectors suggest that the absence of a supporting declaration from the Fund somehow throws the trial court's fee award into question. (AOB 21.) As class counsel explained, however, "David R. Atkins was the trustee of [the Fund] who was directly responsible for monitoring this litigation. Mr. Atkins was deposed in this case, as the Fund's representative, on July 2, 2002. Mr. Atkins has since retired and has not submitted a declaration. However, the Fund has approved both the settlement and the request for attorneys' fees in this case." (22 Rec. 5022.)

In sum, plaintiffs pursued this case diligently and worked closely with class counsel. Accordingly, they were in a position to know the substantial time

commitment counsel made to the case. Moreover, contrary to Objectors' assertion (AOB 20), the record shows that both plaintiffs fully support all aspects of the final resolution of the case, including the fees awarded to counsel. (22 Rec. 5022, 5111.)

Tellingly, Objectors cite no authority holding that representative plaintiffs in a class action must police the work their attorneys do by conducting a detailed review of counsel's time records. The cases Objectors do cite are inapposite. (AOB 15, citing *Jane L. v. Bangerter*, 61 F.3d 1505 (10th Cir. 1995) and *Ramos v. Lamm*, 713 F.2d 546 (10th Cir. 1983).) Neither of these were common fund fee cases, but were cases in which fees were sought under 42 U.S.C. §1988 – a “fee-shifting” statute. Pursuant to such statutes, fees generally are awarded using the lodestar method, which compensates counsel at a reasonable rate for hours reasonably expended. In fee-shifting cases, courts require more detailed proof of hours worked because of the underlying concern that the fee is “shifted” to the losing party against its will. See *Pennsylvania v. Delaware Valley Citizens' Council for Clean Air*, 483 U.S. 711, 722 (1987).

This, however, is a “fee-sharing,” not a fee-shifting, case (*i.e.*, the burden of paying counsel fees is spread among all members of the benefited class). *Brown*, 838 F.2d at 454. Where, as here, such a fee is awarded as a percentage of the common fund, the reasonableness of the fee is assured by the court's oversight. Examining

counsel's lodestar may serve as a cross-check on the reasonableness of the percentage fee, but there is no general requirement in such a case that class counsel produce detailed time entries. *See In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 306-07 (3d Cir. 2005) (a court performing a "lodestar cross-check" in assessing the reasonableness of a percentage fee "may rely on summaries submitted by the attorneys and need not review actual billing records").⁵

In any event, whether Brody or the Fund reviewed class counsel's time records is of no significance because the court approved the fee award in accordance with Colorado law after examining all relevant factors. Where, as here, numerous other factors support the court's fee determination in a common fund case, the actual number of hours devoted by counsel to the case is not determinative. *See Brown*, 838 F.2d at 456 ("in awarding attorneys' fees in a common fund case, the 'time and labor involved' factor need not be evaluated using the lodestar formulation when, in the

⁵ Indeed, both in lodestar and percentage cases, courts have not required production of contemporaneous time records absent some showing of collusion or other potential misconduct. No such showing has been made here. *Lobatz v. U.S. West Cellular of Cal., Inc.*, 222 F.3d 1142, 1148 (9th Cir. 2000) (request for time records supporting lodestar fee denied where objector made no showing of any "legitimate need" for the information); *see also Hemphill v. San Diego Ass'n of Realtors*, 225 F.R.D. 616, 623-24 (S.D. Cal. 2004) (denying objector's request for class counsel's time records where, *inter alia*, there was no indication of collusion).

judgment of the trial court, a reasonable fee is derived by giving greater weight to other factors, the basis of which is clearly reflected in the record”).

c. The “Undesirability’ of the Case”

In the strongest possible terms, Judge Coughlin reminded Objectors that class counsel stepped forward to take on this very challenging case on their and the class’s behalf when no one else did. As he explained:

We have [Objectors’] counsel They didn’t bring the claim. They knew all the facts. Everybody knew about the record date and then they changed the record date. They didn’t bring the lawsuit. . . . There wasn’t any other lawyers [sic] in the United States that took the gamble that these people did. Not one other firm said I’m willing to take that on. I’ll go five years. I’ll pay out the expenses. I’ll put my time and effort on the line. Nobody did. You can say that that’s a lot of money to get 30 percent of this settlement, but a lot of lawyers had a crack at it and they didn’t do it.

(26 Rec. 62:17-63:6.)

Objectors do not dispute this finding. Nor do they dispute that the case bore a substantial risk of no recovery because of thorny factual issues and unprecedented legal issues, further diminishing the desirability of the case.

d. Awards in Similar Cases

The trial court observed that a 30% fee “has long been considered a reasonable contingent fee.” (26 Rec. 63:25-64:1.) Judge Coughlin’s observation is well grounded in the law, as evidenced by a host of Colorado federal and state cases, cited

by plaintiffs in the trial court, in which 30-35% fee awards were granted.⁶ (*See, e.g.*, 22 Rec. 4992-93; 25 Rec. 5294-578 (citing, *inter alia*, *Vaszlavik v. Storage Tech. Corp.*, Civ. A. No. 95-B-2525, 2000 U.S. Dist. LEXIS 21140, at *4 (D. Colo. Mar. 9, 2000) (awarding 30% fee).

The trial court's finding that the 30% fee award was reasonable is also supported by awards in other jurisdictions in similar cases. *See also Taubenfeld v. Aon Corp.*, 415 F.3d 597 (7th Cir. 2005) (affirming 30% fee award on \$7.25 million settlement); *In re Ikon Office Solutions, Inc. Sec. Litig.*, 194 F.R.D. 166 (E.D. Pa. 2000) (court awarded 30% fee on a \$111 million recovery); *In re Prison Realty Sec. Litig.*, Civ. A. No. 3:99-0458, 2001 U.S. Dist. LEXIS 21942 (M.D. Tenn. Feb. 9, 2001) (awarding 30% fee on \$104 million recovery); *Kurzweil v. Philip Morris Cos., Inc.*, No. 94Civ.2373(MBM), 1999 WL 1076105 (S.D.N.Y. Nov. 30, 1999) (awarding 30% fee on \$123 million recovery); *In re Combustion, Inc.*, 968 F. Supp. 1116 (W.D. La. 1997) (awarding 36% fee on \$127 million recovery); *In re United Telecommunications Sec. Litig.*, Civ. A. No. 90-2251-O, 1994 U.S. Dist. LEXIS 9151 (D. Kan. June 1, 1994) (awarding 33-1/3% fee on \$28 million recovery); Thomas E.

⁶ This Court's policy precludes citation now to at least ten of the decisions cited in the trial court. *See* <http://www.courts.state.co.us/coa/opinion/unpublished.htm>. However, this Court may review the record before the trial court in considering the basis for the trial court's conclusions. (*See* 22 Rec. 4992-93; 25 Rec. 5394-578.)

Willging, Laural L. Hooper & Robert J. Niemic, *Empirical Study of Class Actions in Four Federal District Courts: Final Report to the Advisory Committee on Civil Rules*, at 69 (Federal Judicial Center 1996) (in study of hundreds of shareholder class actions, the average fee was around 30% of the settlement).)

Objectors insist that the 30% award in this case is out of line with awards in similar “megafund securities cases.” (AOB 15.) First, plaintiffs question whether the result here is properly categorized as a “megafund” settlement. Objectors are comparing this \$50 million settlement to those with estimated values of over \$300 million (*In re Bristol-Myers Squibb Sec. Litig.*, 361 F. Supp. 2d 229 (S.D.N.Y. 2005) and *Duhaime v. John Hancock Mut. Life Ins. Co.*, 989 F. Supp. 375 (D. Mass. 1997), and upwards of \$1 billion (*In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283 (3d Cir. 1998)). Even the study cited by Objectors shows that such a comparison is not warranted. The results of that study demonstrate that settlements in the \$25-\$100 million range net an average 26% attorney fee award – just below that awarded here. Elaine Buckberg, Ph.D., Todd Foster, Ronald I. Miller, Ph.D., *Recent Trends in Shareholder Class Action Litigation: Are WorldCom and Enron the New Standard?*, at 7 (NERA July 2005), available at http://www.nera.com/image/Recent_Trends.07.2005.pdf. According to Objectors’ study, it is only in cases

with settlements exceeding \$100 million that percentage fee awards begin to decline significantly. *Id.*

Moreover, none of the cases Objectors cite are similar to this one. For example, in *Bristol-Myers*, the parties reached a settlement early in the case, before any discovery had been done and significant resources expended. 361 F. Supp. 2d at 232 (noting settlement was reached less than a year after filing of complaint, while case was on appeal from order granting motion to dismiss). The court specifically noted the minimal risk and relative lack of complexity of the case, as well as the early resolution, as factors in awarding a 4% fee. *Id.* at 234-35.

In *Prudential*, the settlement largely was based on the report of a multi-state task force convened by a state regulatory agency that investigated the alleged illegal practices. 148 F.3d. at 294. The Third Circuit observed that the record did not show that class counsel's efforts were a significant factor in achieving the benefits created by the work of the task force. *Id.* at 336. The court noted that in the absence of the lawsuit, the benefits obtained for the class likely would have been achieved through the continuing efforts of state regulators. *Id.* at 337-38.

The settlement in *Duhaime* involved a negotiated fee paid by the defendant, not out of a class fund, and settlement was reached after only 15 months of litigation. 989 F. Supp. at 58-59. The court's fee decision was influenced by uncertainty regarding

the actual value of the settlement. Plaintiffs valued the settlement at nearly \$370 million, but the “actual” value – measured by class participation in the settlement – was potentially much less. *Id.* at 377-79. Accordingly, the court adopted a “staged” approach to awarding fees, paying some fees up front but waiting to pay the balance to ensure that the fee award would reflect the actual value of the settlement to the class. *Id.* at 380.

This case shares none of the factual or procedural underpinnings of these “megafund” cases. Unlike Objectors’ cases, the settlement here was reached on the eve of trial, after five years of vigorous litigation. Unlike *Prudential*, this settlement was the direct result of counsel’s efforts. No agency or regulator played any role in securing any of the benefits obtained for the class. And unlike *Duhaime*, the value of the settlement is not in doubt. As the court noted: “This is cash in the shareholders’ pockets. . . . This isn’t a coupon you take to Blockbuster to get 50 cents off. This is cash.” (26 Rec. 65:4-8.)⁷

⁷ Objectors also cite the unreported decision in *Branch v. FDIC*, No. Civ.A. 91-CV-1327ORGS, 1998 WL 151249 (D. Mass. Mar. 24, 1998). That case is distinguishable for a number of reasons, including that: (1) no fee greater than 23% has ever been awarded in ERISA cases, where fee awards tend to be more conservative; (2) the case was not nearly as intensely litigated as this one; and (3) the final value of the settlement was uncertain. *Id.* at *1-*3.

Finally, Objectors cite the fee decision in *In re Sprint Corp. Sec. Litig.*, No. 01-4080-CM (D. Kan. Dec. 16, 2003). In that case, the court awarded counsel a fee of 17.5% of a \$50 million settlement. As Objectors' concede, however, the fee request in that case was based on a prior agreement with the institutional plaintiffs. (AOB 16.) It has little relevance to the fee request here, which is based on a percentage of the common fund.

In any event, the *Sprint* securities litigation fee award does not tell the whole story because there was a companion derivative case to that litigation. The two cases were based on the same facts and constituted a global effort to redress fraud and breaches of fiduciary duties arising from Sprint's failed merger with WorldCom. Both cases were litigated by the same attorneys. The cases were settled at the same time, and plaintiffs' counsel was awarded a separate fee in each: A cash payment of 17.5% (or \$8.75 million) in the securities litigation and stock valued at \$6.14 million in the derivative action. Thus, the total value of the fees paid to plaintiffs' counsel in the *Sprint* litigations equaled 30% of the \$50 million fund obtained for the class – the same fee awarded here.⁸ In short, the fee order in the *Sprint* securities litigation does

⁸ The history of the *Sprint* litigations and settlements, and the details of the fee award, were reported in a contemporaneous article in the *Kansas City Star*, a copy of which is included in the addendum hereto. Plaintiffs respectfully request the Court to

not support Objectors' contention that the 30% fee awarded here is a "windfall" by comparison. (AOB 16.)

2. Objectors' Contention that the Fee Order Violates Colorado's Rule Governing Contingent Fees Is a Red Herring

Objectors assert that the trial court violated Rule 5 of Chapter 23.3 of the Colorado Rules of Civil Procedure by failing to insist on production of a written fee agreement between counsel and plaintiffs. (AOB 18-19.) Rule 5 generally requires contingent fee agreements to be in writing and to contain specific information. C.R.C.P. ch. 23.3, Rule 5. The sanction for noncompliance with this rule is the inability to enforce payment by clients. *Elliott v. Joyce*, 889 P.2d 43, 45 (Colo. 1994); C.R.C.P. ch. 23.3, Rule 6.

Objectors' reliance on Rule 5 is misplaced. First, that rule does not apply because class counsel did not request attorneys' fees based on any agreement with

take judicial notice of the facts set forth in this article regarding the fee awards in these cases, to the extent it deems it necessary to determine whether any weight should be given to Objectors' citation to the *Sprint* securities litigation fee order. Judicial notice is appropriate under these circumstances because the basic facts are not reasonably subject to dispute and can be readily verified through court records and other reliable sources. See C.R.E. 201; see also *Conrad v. City and County of Denver*, 724 P.2d 1309, 1311 (Colo. 1986) (noting that trial court took judicial notice of a public controversy based on materials from local newsletters); *Antlers Athletic Ass'n v. Hartung*, 274 P. 831, 833 (Colo. 1928) (court may take judicial notice, *inter alia*, of public discussion in newspapers).

plaintiffs. Second, Colorado law permits attorneys' fees based on statute and common fund principles in addition to private agreements. *See, e.g., Hawes v. Colo. Div. of Ins.*, 65 P.3d 1008, 1015 (Colo. 2003) (Colorado law permits fee awards based on statute, court rule, private agreement or common fund principles); *Spensieri*, 804 P.2d at 271 (in statutory fee case, pre-existing fee arrangement not determinative because the issue is not what was agreed, but what is the reasonable value of the services rendered). Objectors cite no authority, and plaintiffs have found none, that requires counsel seeking a common fund fee to present a fee agreement to the court so that it may "be tested" against the requested common fund fee. (AOB 19.)

Third, the purpose of Rule 5 is to "carefully regulate[]" fee agreements between attorneys and their clients in cases where, unlike this one, court approval of a fee is not required. *Fasing v. LaFond*, 944 P.2d 608, 611 (Colo. Ct. App. 1997). In class actions, the court takes on the role of fiduciary to protect the interests of the entire class. The key issue is whether the requested fee is reasonable and fair to the class as a whole, not simply to the named plaintiffs. The fee is approved by the court only after careful evaluation of the factors outlined in *Johnson*, 488 F.2d 714, and Rule 1.5. The "regulatory" purpose of Rule 5 in the context of private agreements is served by the court's oversight of the fee application process in the class action/common fund context.

B. The Record More than Sufficiently Supports the Trial Court's Award of Litigation Expenses

Objectors contend that the trial court abused its discretion in awarding approximately \$1.3 million in litigation expenses because class counsel failed to sufficiently document those expenses. (AOB 22-25.) Their contention is factually and legally baseless.

Class counsel detailed their expenses in their submissions to the court. In sworn declarations, counsel not only stated their total expenses but itemized them by firm and by category. (23 Rec. 5130-33, 5146-54, 5227-29, 5275-77.) Counsel also confirmed that all the requested expenses were properly incurred in connection with prosecuting this case. (23 Rec. 5130, 5134, 5146, 5154, 5227, 5229, 5277-78.) Moreover, counsel explained in great detail their efforts that required the commitment of substantial financial resources over five years of aggressive litigation. (*See, e.g.*, 22 Rec. 5013-106.) The vast bulk of counsel's expenses were for expert and consultant fees, which the court deemed "absolutely essential," and the cost of sending notice to the class – at nearly \$400,000, the largest single item of expense. (23 Rec. 5146; 26 Rec. 65:13.) Significantly, Objectors do not challenge the necessity or propriety of

any of these major expenses. (*See, e.g.*, 26 Rec. 13:4-5 (“They had to have experts and we understand that.”).)⁹

Rather, the Objectors waste the Court’s, appellees’ and the class members’ time with what they concede is “nitpicking” (26 Rec. 11:15) over lesser categories of expense. Specifically, they raise unsubstantiated concerns regarding the costs of photocopying and online research, as well as travel related to discovery or trial preparation. (AOB 22-25.) Objectors point to no facts, however, indicating that these expenses were not properly incurred in the course of prosecuting this case and preparing for trial. Their speculation is insufficient to warrant reversal of the trial court’s exercise of discretion.

When evaluating a settlement or fee application, courts generally are entitled to rely on counsel’s representations absent some evidence that they should not do so. Examination of fee and expense records “is not warranted where the court has sufficient materials already before it to evaluate the settlement and fee application, and where the objectors have failed to make cogent factual objections which indicate

⁹ To put plaintiffs’ expense request in perspective, it bears noting that defendants paid just one of their experts, David Kaplan, over \$400,000 – nearly one-third of plaintiffs’ total expenses. (*See* 11 Rec. 2672.)

the need for discovery and a possible evidentiary hearing.” *Malchman v. Davis*, 588 F. Supp 1047, 1061 (S.D.N.Y 1984).

Here, the trial court had before it not only counsel’s sworn, itemized declarations, but also a detailed discussion of the work counsel performed that demonstrated the necessity for the expenditures sought to be recovered. The court also had the benefit of having presided over this case for several years. Based on plaintiffs’ submissions and the conduct of class counsel during the course of the litigation, the trial court concluded: “I find counsel to be honest and if they tell me that’s what the expenses [are], I believe ’em.” (26 Rec. 65:9-11.)

By contrast, Objectors make no “cogent factual” challenges – only unsubstantiated complaints. For example, Objectors maintain that meal and travel expenses should not be awarded without detailed supporting documentation, but give no reason for doubting counsel’s sworn statements regarding those expenses. In fact, class counsel specified the case-related purpose for the out-of-town travel expenses incurred. (*See e.g.*, 23 Rec. 5149-52, 5228, 5276-77.) Among other things, meal and travel expenses were necessary in connection with the 36 depositions taken across the country and preparation for trial. (22 Rec. 5033, 5038-39, 5046.) Objectors cite no authority requiring counsel in a common fund case to submit every hotel bill and other expense in the manner suggested by Objectors, particularly where counsel’s

submissions already set forth credible evidence of both the amounts and reasons for the expenses.

Objectors also insist that the court abused its discretion in allowing reimbursement of all of counsel's in-house photocopying expenses at 25¢ per page. (AOB 26.)¹⁰ Again, Objectors cite no authority or evidence supporting this assertion.¹¹

Finally, Objectors illogically contend that the trial court erred in reimbursing counsel's online legal research costs because "there was no trial of this matter." (AOB 22.) The cases they cite, *Roget v. Grand Pontiac*, 5 P.3d 341 (Colo. Ct. App. 1999) and *Mackall v. Jalisco Int'l, Inc.*, 28 P.3d 975 (Colo. Ct. App. 2001), do not help them. By requiring that reimbursable costs be those that are "necessary for trial

¹⁰ Although their chart references the total amount of copying expenses, Objectors take issue only with 25¢ copying charges, which apply to in-house but not outside copying. (AOB 25.) The in-house copying charges amount to less than \$62,000. (See 23 Rec. 5133, 5153, 5228.) One firm, Weiss & Lurie, did not break out its in-house copying charges. (See 23 Rec. 5277.)

¹¹ *Bratcher v. Bray-Doyle Indep. Sch. Dist. No. 42*, 8 F.3d 722, 725-26 (10th Cir. 1993), cited by Objectors, stands for the unremarkable proposition that compensable expenses must be reasonable and of a type typically billed to paying clients in the marketplace. Notably, Objectors do not contend that photocopying expenses are not typically billed to paying clients; rather, they only object to the amount of the expense. As noted, however, they provide no "cogent" grounds for their objection, and it must be rejected.

preparation,” these decisions mean only that the costs must be reasonably necessary for development of the case and preparing for trial. They do not hold, as Objectors argue, that only those costs incurred directly in connection with trying the case are reimbursable. The *Roget* court relied in part on *Cherry Creek Sch. Dist. #5 v. Voelker*, 859 P.2d 805 (Colo. 1993), which explained that the costs of taking discovery depositions, including travel, were properly reimbursable even though not necessary for preserving testimony for trial, because they “were reasonably necessary for the development of the case,” and were therefore “an important component of effective trial preparation.” *Id.* at 813. The *Roget* court affirmed *Cherry Creek’s* “broad definition of costs” (5 P.3d at 348), and clarified that to be recoverable, costs must be of a type separately billed to a client and not part of a firm’s general overhead. *Id.*; *see also Mackall*, 28 P.3d at 978 (awarding costs against defendant for computerized legal research, because court found these were reasonable and necessary expenses separately billed to client).

The detail provided in counsel’s declarations provides more than sufficient information for the court to conclude that the computerized legal research, as well as the travel and copying expenses, were all necessarily and reasonably incurred to prepare this case for trial, and were not merely part of counsel’s general operations. In addition to the itemization of the travel expenses mentioned previously, the

Andracchio Declaration identifies in detail the numerous motions to dismiss, and motions for class certification, summary judgment and summary adjudication, as well as motions in limine and discovery-related motions. All of these motions necessarily required extensive legal and factual research, as well as copying of briefs, cases and exhibits. (22 Rec. 5028-30, 5034-43.) Discovery was also extensive, requiring the copying and review of documents totaling tens of thousands of pages. (22 Rec. 5030-33, 5043-47.) The parties also fully prepared for trial, which included the preparation and copying of exhibits, and travel for witness preparation and the trial itself. (22 Rec. 5043-55.)

By contrast, Objectors cite no facts, evidence or law to rebut class counsel's detailed and sworn submissions. Their "objections" to counsel's request for reimbursement of expenses are based only on speculation, and should be rejected.

VI. CONCLUSION

For the reasons stated, the trial court's award of attorneys' fees and expenses to class counsel should be affirmed in all respects.

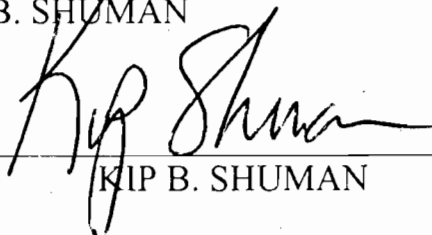
Plaintiffs-appellees respectfully request costs for this appeal, pursuant to C.A.R. 39(a). Objectors-appellants' request for fees and costs should be denied, as they have

failed to offer any authority for such an award. *See* C.A.R. 39.5 (party seeking fees must state the legal basis for its request in its principal brief).

DATED: September 26, 2006

Respectfully submitted,

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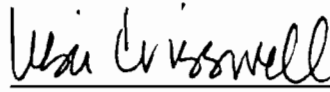
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CERTIFICATE OF SERVICE

I hereby certify that on September 26, 2006, I caused a copy of the foregoing **Plaintiffs-Appellees' Answer Brief** to be served by depositing the same in the United States mail, first-class postage prepaid, addressed to counsel for all parties in the case as designated by the attached Service List.



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ADDENDUM

Judges OK end to Sprint litigation; Settlement over failed merger The K

executives.

The settlement also restricts the accelerated vesting of stock options until next July -- the issue that was at the crux of the lawsuits.
refused to dismiss the lawsuits.

Earlier this year, after mediation conducted by Eric D. Green, a Boston University law professor and a founder of Boston-based Resolutions LLC, the parties agreed to the settlement.

The cash part of the settlement, which resolves the federal lawsuit, calls for Sprint to pay \$50 million to purchasers of Sprint's FON and PCS stock between Oct. 4, 1999, and Sept. 19, 2000, and who suffered a loss as a result. To participate, class members must submit proofs of claim by Feb. 2.

Notices of the settlement were mailed to more than 126,000 potential class members. Although a handful of potential members "opted out" and are not bound by the settlement, no one objected to it.

The federal court settlement calls for the plaintiffs' attorneys to get 17.5 percent of the settlement proceeds, or \$8.75 million, plus \$375,000 in expenses.

In an unusual though not unprecedented fee arrangement, the Jackson County settlement calls for the plaintiffs' attorneys to be paid with 500,000 shares of Sprint's PCS tracking stock and 250,000 shares of its FON tracking stock. With FON shares closing Tuesday at \$15.11 and PCS shares closing at \$4.72, the stock was worth nearly \$6.14 million.

The attorneys' apparent faith in the stock's value was underlined at the Jackson County hearing by Park of Milberg Weiss, who noted that Sprint's market cap had increased some \$3.5 billion since the settlement's announcement this spring.

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Judges OK end to Sprint litigation; Settlement over failed merger The K

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First glance

Sprint has settled shareholder litigation stemming from its failed merger with WorldCom.

Plaintiff-shareholders are getting cash and corporate governance changes.

Sprint has not admitted liability.

LOAD-DATE: December 17, 2003

