

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:	§	
	§	Chapter 11
	§	
SHERIDAN HOLDING COMPANY I, LLC, <i>et al.</i> , ¹	§	Case No. 20-31884 (DRJ)
	§	
Reorganized Debtors.	§	(Jointly Administered)
	§	

**DECLARATION OF REX A. SHARP
IN SUPPORT OF CLASS REPRESENTATIVES’ AND
SETTLEMENT CLASS COUNSEL’S MOTION FOR APPROVAL OF:
(I) ADMINISTRATION EXPENSES; (II) CLASS COUNSEL FEES AND EXPENSES;
AND (III) CLASS REPRESENTATIVES FEE**

I, Rex A. Sharp, of lawful age, upon personal knowledge, and pursuant to 28 U.S.C. § 1746, declare the following under penalty of perjury:

1. I am the managing partner of Sharp Law, LLP (“Sharp Law”), located at 5301 West 75th Street, Prairie Village, Kansas, 66208. I am the lead attorney in the Class Lawsuit and am co-counsel with the DeVore Law Firm, PLC in the Born Action. I hired Michael Grant of the Grant Law Firm, P.L.L.C., to serve as local counsel in the Class Lawsuit.² I also arranged the retention of Charles Rubio of Diamond McCarthy, LLP, to represent the Settlement Class in the above-captioned proceedings. The Court has appointed the four law firms as Settlement

¹ The Reorganized Debtors in these chapter 11 cases, along with the last four digits of each Reorganized Debtor’s federal tax identification number, include: Sheridan Holding Company I, LLC (7648); Sheridan Investment Partners I, LLC (8607); Sheridan Production Partners I, LLC (8094); Sheridan Production Partners I-A, L.P. (8100); Sheridan Production Partners I-B, L.P. (8104); Sheridan Production Partners I-M, L.P. (8106); and SPP I-B GP, LLC (8092). The location of the Reorganized Debtors’ service address is: 1360 Post Oak Blvd., Suite 2500, Houston, Texas 77056. “Debtors” refers to these same entities before the Effective Date of the *Amended Joint Prepackaged Plan of Reorganization of Sheridan Holding Company I, LLC and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [ECF No. 11] (the “Plan”).

² As local counsel, Mr. Grant is paid hourly. Sharp Law has paid Mr. Grant’s invoices and seeks their recovery as an expense.

Class Counsel.³

2. I am a member in good standing of the Bars of the States of Oklahoma, Texas, Kansas, Missouri, and Colorado, and have been admitted *pro hac vice* in this matter. There are no disciplinary proceedings pending against me.

3. I have read the *Class Representatives' and Settlement Class Counsel's Motion for Approval of (I) Administration Expenses, (II) Class Counsel Fees and Expenses; and (III) Class Representatives Fee* (the "Fees and Expenses Motion"). To the best of my knowledge, information and belief, the statements in the Fees and Expenses Motion are true and correct.

4. In addition, I incorporate the statements in the *Declaration of Rex A. Sharp in Support of Joint Motion for Preliminary Settlement Approval* [ECF No. 41], which identifies Settlement Class Counsel, describes the history of the litigation, analyzes the factors for class certification under Civil Rule 23(a) and (b)(3), including the qualifications and adequacy of Settlement Class Counsel, particularly Sharp Law, LLP.

5. I submit this Declaration to provide the Court with the time and expenses that Sharp has invested in the prosecution of the Class Lawsuit and Born Action and in the negotiation and implementation of the Settlement Agreement in this Bankruptcy Proceeding.

History of the Whisenant and Taylor Actions

6. On December 6, 2014, Plaintiff Tony R. Whisenant filed a putative class action lawsuit against Sheridan Production Company, LLC styled *Whisenant v. Sheridan Production*

³ Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Settlement Agreement dated as of March 20, 2020 (the "Settlement Agreement"), which is attached as Exhibit 1 to the *Preliminary Approval Order (I) Directing the Application of Bankruptcy Rule 7023, (II) Preliminarily Approving the Class Settlement, (III) Appointing the Settlement Administrator; (IV) Approving Form and Manner of Notice to Class Members, (V) Certifying a Class, Designating Class Representatives, and Appointing Class Counsel for Settlement Purposes Only, (VI) Scheduling a Settlement Fairness Hearing to Consider Final Approval of the Settlement, and (VII) Granting Related Relief* (the "Preliminary Approval Order") [ECF No. 123]. The appointment of Settlement Class Counsel appears at paragraph 12 of the Preliminary Approval Order.

Company, LLC, No. CJ-2014-19, in the District Court of Beaver County, Oklahoma, on behalf of royalty owners in wells in Beaver County, Oklahoma, asserting claims for breach of lease and breach of fiduciary duty based on Sheridan's alleged deduction of costs incurred after the gathering line inlet from royalty. Claiming jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332(d)(2), SPC removed the action to federal court where it was assigned Case No. CIV-15-81-SLP in the United States District Court for the Western District of Oklahoma (the "Whisenant Action"). After unsuccessful efforts seeking remand of the case to state court, including a petition for writ of certiorari to the United States Supreme Court, Whisenant filed an amended complaint with Sheridan's consent that would have expanded both the geographic and temporal scope of the class claims, but the district court held the amendment was untimely.

7. On January 10, 2018, Plaintiff Kyle Allan Taylor, represented by the same counsel as Whisenant, filed a putative class action on behalf of all royalty owners in the State of Oklahoma whose wells are or were operated (or marketed and directly paid to royalty owners) by SPC, asserting claims for breach of lease and breach of fiduciary duty based on the deduction of costs incurred after the gathering line inlet from royalty. This case is styled *Taylor v. Sheridan Production Company, LLC*, No. CIV-18-29-JWD in the United States District Court for the Western District of Oklahoma (the "Taylor Action").

8. Because the Whisenant Action and Taylor Action involved common questions of law and fact and because the claims in the larger statewide Taylor Action subsumed the narrower claims in the Whisenant Action, the Parties agreed to consolidation of the cases, with the Taylor Action being designated the lead case.

9. Depositions in the Taylor Action revealed that, although SPC operated the wells, it did not own the leases. Instead, Sheridan Production Partners I-M, L.P. and Sheridan

Production Partners I-A, L.P. own beneficial interests in the leases. Sheridan Holding Company I, LLC owns legal title to the leases. Thereafter, on December 6, 2019, the First Amended Class Action Complaint (Doc. 45), naming the proper defendants, was filed in the Taylor Action. The consolidated Whisenant and Taylor Actions are referred to as the “Class Lawsuit”.

10. In Class Lawsuit, Defendants produced more than 22,000 pages of leases, more than 500 pages of gas contracts, more than 4,000 pages of plant statements, and almost 1000 separate files of revenue transaction data for all wells it operated in Oklahoma from January 2013 to the summer of 2018. After my firm and the expert I had hired reviewed all this data to assess liability and damages and had researched prior settlements impacting the analysis, SPC’s counsel and I began settlement discussions in the fall of 2018.

11. For more than a year we engaged in negotiations and extended the scheduling order in the Class Lawsuit several times as a result.

12. After the execution of the Settlement Agreement, Debtors provided additional royalty owner records to enable Settlement Class Counsel and the Settlement Administrator to mail the Notice of Settlement to the Settlement Class Members.

13. Attorneys and staff under my supervision reviewed the records produced to identify persons and entities excluded under the definition of the Settlement Class. This process involved a line-by-line review of the data produced and research into the named royalty owner and its subsidiaries and affiliates.

14. To implement the Plan of Allocation and Distribution, Debtors produced volumetric data and over 1,000 revenue transaction reports. Processing this data is on-going and has consumed many hours to-date.

15. In addition, Settlement Class Counsel filed and served Notices of Rule 2004

Examinations on a dozen successor third-party operators of almost 100 Class Wells to obtain volumetric data and revenue paydecks for Class Wells that Debtors sold during the Class Period.⁴ Settlement Class Counsel met and conferred multiple times with each of these operators to obtain the data for use in the Plan of Allocation and Distribution that the Court has approved.

16. To date, Sharp Law has expended over 860 hours, mostly by me and my partner, Barbara Frankland, on prosecuting the Class Lawsuit and on negotiating and implementing the settlement of the Class Lawsuit and the Born Action.

17. As set forth below, Settlement Class Counsel will continue to expend time and resources to implement the Settlement and to respond to inquiries from Settlement Class Members. The amounts awarded for Class Counsel Fees is not only for past work but for future work that, under the timeline prepared by the Settlement Administrator, will extend into 2021, in an unknown quantity of hours (but usually hundreds of hours more), to fully account to the Court for the distribution of Settlement Proceeds.

Time Invested

18. Sharp Law accepted the Whisenant Action and the Taylor Action on a contingent fee basis that provided for attorneys' fees in the amount of 40% of the gross recovery, and 45% if the representation involved an appeal, plus reimbursement of actual expenses incurred in the representation if the representation was successful.

19. Even though Sharp Law accepted the representations on a contingent fee basis, with both parties intending Sharp Law be paid a percentage of the gross recovery, Sharp Law maintains, in the course of its ordinary practice, computerized records of the time expended in the representations it accepts.

⁴ See ECF Nos. 143-151, 155, 157-161.

20. I have reviewed the records for Sharp Law's representation in the Class Lawsuit, including the time expended in pursuing the settlement as part of the Bankruptcy Proceeding.

21. Sharp Law has invested over 860 hours in prosecuting the Class Lawsuit and in negotiating and implementing the Settlement of the Class Lawsuit and Born Action to date. The time expended includes reviewing the Settlement Agreement, including its exhibits, with Mr. Taylor and Mr. Whisenant.

22. Because Sharp Law represents clients on a contingent fee basis, if Sharp Law is not successful in the matter, it receives nothing for its time expended. And, not every matter accepted is successful. Consequently, Sharp Law may receive nothing despite spending many hours on a matter that turns out to be unsuccessful.

23. When Sharp accepts a representation, neither the client nor Sharp Law knows the ultimate outcome, which explains the use of the percentage of recovery approach to align the interests of the client and the law firm in maximizing the success of the matter.

24. And, where, as here, the defendants seek bankruptcy protection, the general unsecured creditors are unlikely to get any recovery at all. So, a five-million-dollar recovery in these circumstances, is exceptional.

25. Sharp Law does not engage in hourly pay-as-you-go work. But, using the average hourly rate in Kirkland & Ellis' Fee Application in this case, the value of the time expended by Sharp Law would exceed \$800,000.⁵ This does not account for the significant time also invested by DeVore Law.

⁵ See *Summary Cover Sheet to the First and Final Fee Application of Kirkland & Ellis LLP and Kirkland & Ellis International LLP, Proposed Attorneys for the Reorganized Debtors From March 23, 2020 Through and Including March 24, 2020* [ECF 152] at 2 (showing "Average hourly rate for professionals" at \$950); *id.* at 49 (showing hourly billed rates ranging from \$1,525.00 to \$610.00).

26. To date, Sharp has received no payment for the hours expended over the past six (6) years in the Taylor Action, the Whisenant Action, or in negotiating and implementing the Settlement in the Class Lawsuit and Born Action.

Expenses Incurred

27. In the ordinary course of Sharp's practice, Sharp maintains a record of expenses incurred in each matter so it can seek reimbursement of those actual expenses in the event of a recovery. If there is no recovery in the matter, Sharp loses the expenses it has paid in the matter.

28. Based on my review of these records, Sharp has actually incurred \$117,532.82 through May 15, 2020 in expenses to prosecute the Class Lawsuit to-date. These expenses include filing fees, court costs, local counsel payments, expert fees, travel, mileage, prints, copying, postage, deposition transcripts, process servers, and court reporter services, and computerized legal research. The preparation of the preliminary allocation alone cost \$30,000. All expenses were reasonable and necessary to the successful conclusion of this matter. Not all expenses may be accounted for as some may have not yet been received for payment.

29. To date, Sharp has received no reimbursement of its expenses incurred over the last 6 years in the Taylor Action, the Whisenant Action, or in negotiating and implementing the Settlement in the Class Lawsuit and Born Action.

Investment of Time and Expenses Going Forward

30. Settlement Class Counsel will continue to invest time and expense in this matter through final reconciliation and accounting to the Court for the distribution of the Settlement Proceeds.

31. Based on its experience in working with the Settlement Administrator in other royalty underpayment class action settlements, Sharp Law estimates investing another 200

hours, to complete the Settlement through final reconciliation and distribution of the Final Undistributed Fund in 2021.

32. Sharp Law further estimates \$50,000.00 in future expenses to pay experts for implementing the Plan of Allocation and Distribution and for services in researching and responding to inquiries about Distribution Checks from Settlement Class Members and to pay Mr. Rubio for his services should the expense exceed the retainer provided.

33. Class Counsel may present additional expenses incurred at the Settlement Fairness Hearing and ask the Court to approve payment of those expenses from the Settlement Proceeds.

Reasonableness of Class Counsel's Fees and Expenses

34. To support the reasonableness of Class Counsel's fee request, I incorporate the analysis of the *Johnson* factors in the *Joint Declaration of Settlement Class Counsel in Support of Class Representatives' and Settlement Class Counsel's Motion for Approval of: (I) Administration Expenses; (II) Class Counsel Fees and Expenses; and (III) Class Representatives Fee* and the exhibits thereto ("Class Counsel Declaration").

DECLARATION UNDER PENALTY OF PERJURY UNDER 28 U.S.C. § 1746

I declare under penalty of perjury that the foregoing is true and correct.
Executed on May 15, 2020.



Rex A. Sharp