

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

NORTHUMBERLAND COUNTY)
RETIREMENT SYSTEM and OKLAHOMA)
LAW ENFORCEMENT RETIREMENT SYSTEM,)
Individually and On Behalf of All Others Similarly)
Situated,)
Plaintiffs,) Case No. CIV-11-520-D
v.)
GMX RESOURCES INC., et al.,)
Defendants.)

DECLARATION OF LAYN R. PHILLIPS

I, LAYN R. PHILLIPS, declare as follows:

1. I was selected by the parties to mediate the above-entitled action and did so as an independent mediator. The mediation, followed by continued negotiations with my assistance, ultimately resulted in the Settlement now before the Court for final approval.

2. While the mediation process is confidential, the parties have authorized me to inform the Court of the procedural and substantive matters set forth below to be used in support of final approval of the Settlement.

3. My statements and those of the parties during the mediation are subject to a confidentiality agreement and Federal Rule of Evidence 408, and I do not intend to waive that agreement or the protections of Rule 408. I make this Declaration based on personal knowledge and am competent to so testify.

4. I am a former United States Attorney and served as a United States District Judge for the Western District of Oklahoma for years, presiding over more than 140 federal trials. I also sat by designation on the United States Court of Appeals for the Tenth Circuit in Denver, Colorado, where I participated in numerous panel decisions and published several opinions in the fields of civil rights, business litigation, environmental law, and summary judgment practice. In July 1991, I resigned from the federal bench and joined Irell & Manella LLP as a litigation partner, where my current practice consists of complex civil litigation, internal investigations, and alternative dispute resolution.

5. For over 20 years, I have successfully mediated high-stakes civil disputes for Fortune 500 companies nationwide and am considered one of the leading mediators in the resolution of multi-party matters, some involving as many as 150 parties. I have mediated hundreds of disputes referred by private parties and courts, and have been appointed a Special Master by various federal courts in complex civil proceedings. I serve as a Fellow in the American College of Trial Lawyers. In addition, I have been nationally recognized as a mediator by the Center for Public Resources Institute for Dispute Resolution (CPR), serving on CPR's National Panel of Distinguished Neutrals. I am also a Diplomat Member of the California Academy of Distinguished Neutrals.

6. A true and correct copy of my curriculum vitae is attached hereto as Exhibit A.

7. Prior to the mediation, the parties provided to me, and exchanged amongst themselves, briefs discussing the factual and procedural background in this action, as well as the disputed factual and legal issues in this action, supported by substantial factual,

expert, and backup data. After reviewing the parties' briefs, I submitted specific, detailed questions to each side to expose the strengths and weaknesses of their positions, as well as to clarify where substantial disputes on class certification, liability, and damages still existed. The parties responded to those questions before or during the mediation.

8. It was apparent to me from the submissions and presentations made by Class Counsel and Defendants' Counsel before and during the mediation that Class Counsel and Defendants' Counsel had each performed a thorough examination of the facts underlying the action and, with the aid of experts, analyzed it to determine appropriate case valuations. Class Counsel and Defendants' Counsel were well informed on the current law and provided legal research and analysis of the relevant law. It was also apparent to me that considerable work was done by Class Counsel and Defendants' Counsel to prepare the case for mediation.

9. On November 4, 2013, the parties participated in a formal mediation session before me in New York City, New York. Class Representatives attended through Class Counsel, Bradley E. Beckworth of Nix Patterson & Roach, LLP and Michael K. Yarnoff of Kessler Topaz Meltzer & Check, LLP. Defendants attended through the following counsel: Kenneth P. Held of Schiffer Odom Hicks & Johnson PLLC and Mack J. Morgan III of Crowe & Dunlevy (on behalf of Defendants Ken L. Kenworthy, Jr. and James A. Merrill); Adam S. Hakki and Christopher R. Fenton of Shearman & Sterling LLP (on behalf of the Underwriter Defendants); Stephen L. Olson and John C. Lennon of Pierce Couch Hendrickson Baysinger & Green, L.L.P. (on behalf of Defendant Smith Carney & Co., P.C.); and Kimberly Huebner (on behalf of AIG). Defendant James A.

Merrill also attended the mediation. During the course of the mediation, I consulted with a representative for one of the Class Representatives (Ginger Poplin, Executive Director of OLERS) by telephone. Class Representative OLERS, along with Class Representative Northumberland, were involved in, and informed of, all aspects of the mediation. While the mediation was productive and progress was made, a settlement was not reached at the conclusion of this session.

10. Following the formal mediation session, the parties, with my assistance, continued to negotiate a resolution of this action, which ultimately resulted in the parties reaching an agreement-in-principle to settle this action on November 25, 2013.

11. After presiding over the mediation process in this case, I am convinced the parties' settlement is the product of vigorous and independent advocacy and arm's-length negotiation conducted in good faith. There was no collusion between the parties.

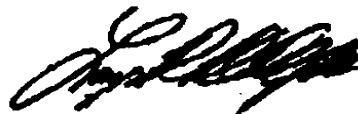
12. Throughout the mediation process, I developed a complete understanding of the full range of the dispute, the respective positions of the parties, and the relative strengths and weaknesses of those positions, as well as the risks, rewards, and costs of continued litigation and inevitable appeal.

13. Based on my knowledge of the issues in dispute, my review of the substantial factual and legal materials presented before and during the mediation, the rigor of the negotiations, the relative strengths and weaknesses of the parties' positions, and the benefits achieved by the Settlement, I believe that the terms of the \$2.7 million settlement represent a well-reasoned and sound resolution of highly uncertain litigation and that the result is fair, adequate, reasonable and in the best interests of the Class.

14. It is apparent from the submissions and presentations made by Class Counsel before and during the mediation session, as well as from my numerous discussions with them, that Class Counsel performed a thorough examination of the merits of the claims in this action. It is also my opinion that Class Counsel performed substantial work and effort in preparing their case for mediation and in presenting their claims in such a way to produce a valuable settlement for the Class. Based upon my experience as a former federal judge in the Western District of Oklahoma and as a mediator, it is my opinion that a request by, and award to, Class Counsel for an attorneys' fee of 25% of the \$2.7 million settlement fund, plus reimbursement of actual litigation expenses, would be reasonable and appropriate given the complexity of this matter and the significant relief obtained by Class Counsel. It is also my opinion that a fee award in that range is in line with the amounts approved by Oklahoma federal courts as being fair and reasonable in contingent fee class action litigation such as this.

I state under penalty of perjury under the laws of Oklahoma that the foregoing is true and correct.

Dated: June 16, 2014



LAYN R. PHILLIPS
Former United States District Court Judge

EXHIBIT A

Layn R. Phillips is a partner with the Los Angeles law firm of Irell & Manella. He is a former United States District Judge and United States Attorney, and founder of the Irell and Manella Alternative Dispute Resolution Center.

Judge Phillips was born and raised in Oklahoma. He attended undergraduate school and law school at the University of Tulsa in Tulsa, Oklahoma and Georgetown University Law Center in Washington D.C. In 1977 he joined the Federal Trade Commission's Honors Program and was assigned to the Bureau of Competition in Washington, D.C., where for the next three years he investigated and litigated civil antitrust cases involving mergers and monopolization claims. In 1980, he joined the United States Attorney's office in Los Angeles as an Assistant United States Attorney, serving as a federal prosecutor in the Central District of California until 1984. During the Reagan Administration, he returned to Oklahoma where he was appointed by the President to serve as the United States Attorney in Tulsa, Oklahoma.

In 1986, he was nominated by the President to serve as a United States District Judge for the Western District of Oklahoma in Oklahoma City. During his tenure on the bench he presided over approximately 150 federal civil and criminal trials in various districts within the Tenth Circuit. In 1990, Judge Phillips was also designated by the Chief Justice of the United States Supreme Court to preside over cases in the Fifth Circuit in the Northern District of Texas, Dallas Division.

Judge Phillips also sat by designation on the United States Court of Appeals for the Tenth Circuit in Denver, Colorado, where he participated in numerous panel decisions and published several opinions in the field of civil rights, business litigation, environmental law, and summary judgment practice. In July 1991, he resigned from the federal bench and joined Irell & Manella as a litigation partner.

As an advocate, Judge Phillips has more than 50 trials to his credit. These trials span several substantive areas of the law, including allegations of unfair competition, environmental contamination, securities fraud, public corruption, money laundering, bank fraud, mail fraud, merger violations, professional malpractice, tax evasion, narcotics trafficking prosecutions, and transgressions of the RICO and Continuing Criminal Enterprise statutes. As a result of his trial work, he has been elected into, and now serves, as a Fellow in the American College of Trial Lawyers.

While serving as a federal judge, he also gained extensive experience in the realm of settlement negotiations and mediation, presiding over dozens of settlement conferences in complex business disputes and class actions. Judge Phillips has mediated hundreds of disputes referred by private parties and courts, and has been appointed a Special Master by numerous federal courts in complex civil proceedings. He has also been designated as special counsel to various boards and corporations, conducting internal investigations on sensitive issues. He has been nationally recognized as a mediator by the International Institute for Conflict Prevention and Resolution, serving on its National Panel of Distinguished Neutrals.

Judge Phillips has also been active in a variety of bar association activities, as well as continuing legal education presentations. During 2001, he served as the President of the Federal Bar Association in Orange County, California, and served on the Orange County Bar Association Board of Directors and Judiciary Committee. Judge Phillips has also served as the President of two American Inns of Court, and maintains the status of Master Emeritus in three separate Inns. He is a member of the California, Oklahoma, Texas, and District of Columbia bar associations.

Judge Phillips is a Fellow of the American Bar Foundation. In 2004-2005 he served as the Co-Chair of the Central District of California Lawyer Representatives to the Ninth Circuit Judicial Conference. In 2005 Judge Phillips was selected by the Central District of California federal judiciary to serve as the Chairman of the Magistrate Judge Merit Selection Panel, a position he still holds. He was also a 2006 Co-Chair for the ABA's Litigation Section's Annual Meeting in Los Angeles.

As an undergraduate student, Judge Phillips graduated with highest honors as an economics major, receiving his college's Wall Street Journal Award for the Outstanding Economics graduate. He attended the University of Tulsa on a NCAA tennis scholarship, serving as the team's captain and winning the Missouri Valley Conference Championship at #1 singles. He also received an NCAA post-graduate scholarship, and was inducted into the University of Tulsa Athletic Hall of Fame. Judge Phillips also graduated from law school with highest honors, finishing second in his class at the University of Tulsa. He then pursued an additional two years of graduate law studies at Georgetown University to complement his work in the field of economic regulation of industry.

For his years of commitment to public service, in 1989 he was named as one of the 10 Outstanding Young Americans by the U.S. Junior Chamber of Commerce. In 1991, he resigned from the federal bench and joined Irell & Manella, where he specializes in complex civil litigation, internal investigations, and alternative dispute resolution. He has the dual honor of being named by *LawDragon Magazine* in 2006 as one of the "Leading Judges in America" and as one of the "Leading Litigation Attorneys in America." *The Los Angeles Daily Journal* named Mr. Phillips as one of California's 100 most influential lawyers in 2008. In addition, Mr. Phillips was also again selected for inclusion in *The Best Lawyers in America* for 2009.

Judge Phillips lives in Orange County, California with his wife, Kathryn. He has three children, Amanda, Parker, and Graham.