

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

**CHIEFTAIN ROYALTY)
COMPANY, KELSIE WAGNER)
TRUSTEE OF THE KELSIE WAGNER)
TRUST AND KELSIE WAGNER)
SUCCESSOR TRUSTEE OF THE)
WADE COSTELLO TRUST)**

Plaintiffs,

v.

Case No. CIV-17-334-SPS

MARATHON OIL COMPANY,

Defendant.

DECLARATION OF MEDIATOR STEVEN L. BARGHOLS

I, STEVEN L. BARGHOLS, upon personal knowledge and pursuant to 28 U.S.C. § 1746, 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 resulted in a negotiated settlement.

2. While the mediation process is confidential, the parties have authorized me to inform the Court of the matters set forth below, to be used in support of Plaintiffs' Motion for Final Approval of Class Settlement.

3. My statements and those of the parties during the mediation are subject to confidentiality by operation of law, and I do not intend to compromise the confidentiality of the mediation process. I make this Declaration based on personal knowledge and am competent to so testify.

QUALIFICATIONS

4. I am a founding shareholder of Hampton Barghols Pierce, PLLC. I have practiced law for more than 40 years and I have mediated almost 3,500 matters across and outside Oklahoma. I am a Band 1 mediator listed by *Chambers and Partners U.S.A.* and I serve regularly as a mediator and as an arbitrator in cases involving energy law, contract law, insurance law, and property issues.

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

THE SETTLEMENT PROCESS WAS THOROUGH, FAIR AND ARM'S-LENGTH

6. Before the scheduled mediation, the parties provided to me and exchanged with each other extensive, confidential legal briefing regarding class certification, merits and damages issues, all supported by evidence and expert opinions. Based on these submissions and as the result of extensive discussions during the course of mediation, I concluded that Class Counsel had performed a thorough examination of the factual discovery and payment data and, with the aid of experts, had analyzed it to determine appropriate case valuations. Class Counsel was current and well informed on the law and provided legal research and analysis of Oklahoma law, federal law, and the law of other states. Also, Defendant was cooperative in producing massive amounts of confidential information to enable Class Counsel to assess the case. It was apparent that counsel for Defendant had performed considerable work in preparation for the mediation.

7. The mediation occurred at the offices of Corbyn Hampton Barghols Pierce, PLLC in Oklahoma City, Oklahoma on August 23, 2018. Plaintiffs and Class Representatives, Robert Abernathy and Kelsie Wagner, attended in-person, along with their counsel, Michael

Burrage, Pat Ryan, Jason Ryan, Paula Jantzen, Robert Barnes, Emily Kitch, Lawrence Murphy, Drew Pate and Brad Beckworth. Defendant attended through its outside counsel, Guy Lipe and Jay Walters; Charlene Tsang-Kao and Kent Harkness, its house counsel with responsibility for this litigation; and Will Houser, its business representative.

8. During the course of the eleven-hour mediation session, I asked detailed questions of both sides designed to expose their relative strengths and weaknesses, as well as to clarify where substantial disputes on class certification, liability, damages, and certain defenses still existed. The parties were cooperative and professional throughout this process.

9. The parties were able to reach an agreement in principle at the mediation, which was later memorialized in the parties' December 11, 2018 Settlement Agreement.

THE PARTIES' NEGOTIATED SETTLEMENT IS THE PRODUCT OF A VIGOROUS, FAIR, REASONABLE AND HONEST MEDIATION PROCESS

10. After presiding over the mediation process in this case, I am entirely convinced that the parties' settlement is the product of vigorous and independent advocacy and arm's-length negotiations conducted diligently, honestly and in good faith.

11. The parties exchanged massive amounts of data for experts to analyze. However, considerable differences continued to exist between the parties and counsel before and during the course of the mediation session on liability, damages, statute of limitations and other issues.

12. For example, the parties presented opposing, good faith arguments as to Marathon's duty, under Oklahoma oil and gas law, to pay statutory interest on certain types of payments. The parties also disagreed about whether and to what extent Marathon was the responsible party for certain late payments that occurred during the relevant time period. An adverse ruling on these issues would be devastating to Plaintiffs' case.

DECLARATION OF MEDIATOR STEVEN L. BARGHOLS

13. The dispute settled prior to class certification, which can often be a substantial hurdle for plaintiffs. Further, following certification, Class Representatives and Class Counsel would still have been required to file, respond to, and win motions for summary judgment and ultimately succeed at trial—all for an unknowable amount of money, if any, to be awarded by an unknown jury.

14. Throughout the mediation process, I developed an understanding of the dispute, the respective liability and damages positions of the parties, the relative strengths and weaknesses of those positions, as well as the risks, rewards and costs of continued litigation and inevitable appeal, and the understanding and appreciation of these various matters by all counsel and representatives participating in the mediation.

15. It is apparent from the submissions and presentations made by Class Counsel before and during the mediation session, as well as from my extensive discussions with them, that Class Counsel performed a thorough examination of the documents and data produced in this litigation.

16. 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.

I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct.

FURTHER AFFIANT SAYETH NOT.

Dated this 4th day of February, 2019.



Steven L. Barghols, Mediator

DECLARATION OF MEDIATOR STEVEN L. BARGHOLS

EXHIBIT A

STEVEN L. BARGHOLS

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210 W. Park Avenue
Oklahoma City, OK 73102
sbarghols@hbplawok.com
Main: 405.600.9225
Direct: 405.702.4347
Fax: 405.600-6851
Cell: 405.570-2542

EDUCATION

J.D., University of Texas School of Law, Austin, TX, 1976
B.A. in History and Political Science, University of Oklahoma, Norman, OK, 1973—Phi Beta Kappa
Drake University, Des Moines, IA (1969-70)

EMPLOYMENT

2019-Present—Hampton Barghols Pierce, PLLC, Oklahoma City, OK
2016-2018—Corbyn Hampton Barghols Pierce, PLLC, Oklahoma City, OK
1996-2015 – GableGotwals, Oklahoma City, OK
1982-1996 – Mock, Schwabe, Waldo, Elder, Reeves & Bryant, Oklahoma City, OK
1976-1982 – Crowe & Dunlevy, Oklahoma City, OK

AREAS OF PRACTICE

Alternative Dispute Resolution (Mediation and Arbitration)

PROFESSIONAL AFFILIATIONS (Historic)

American Bar Association

Oklahoma Bar Association

- Member, Diversity Committee (Founding Chair)
- Member, Strategic Planning Committee
- Member, Budget Committee
- Member, Paralegal Services Committee
- Member, Awards Committee
- Member, Legal Ethics and Unauthorized Practice of Law Committee; co-author of various ethics opinions
- Member, Alternative Dispute Resolution Section (Member, Mediation Study Group on Promoting Mediator Quality)
- Member, Professionalism and Civility Task Force
- Member, Lawyer Advertising Task Force
- Member, Law Practice Management Task Force
- Coordinator, OBA Tornado Disaster Relief Project
- Co-principal drafter, Oklahoma Bar Association's Standards of Professionalism, 2002
- Chair, Appellate Settlement Committee, 1991-1994:
This committee designed and implemented Oklahoma's Appellate Settlement Conference Program approved and adopted by the Supreme Court of Oklahoma in November 1992.

- Recipient, Joe Stamper Distinguished Service Award, 2013
- Recipient, Neil E. Bogan OBA Professionalism Award, 1997

Oklahoma Bar Foundation

- Trustee, 2013-2016

Oklahoma County Bar Association

- President, 1996-1997
- Vice President, 1994-1995
- Director, 1991-1998

Chair, Judiciary Task Force—Led group of Oklahoma County lawyers, judges and court administrators in successfully promoting Oklahoma County Courthouse security initiatives

- Member, Bench & Bar Committee
- Member, Awards Committee
- Member, Long-Range Planning Committee (past chair)
- Member, Fee Grievance and Ethics Committee (past chair) 1978-Present
- Member, Judicial Salaries Committee
- Delegate to numerous OBA House of Delegates annual meetings

- Recipient, Bobby G. Knapp Bar Leadership Award, 2007
- Recipient, Journal Record Leadership in Law Award, 2007
- Recipient, President's Award, 2009

Oklahoma County Bar Foundation – President, 1995-2010

Mineral Lawyers Society of Oklahoma City – Member
(President 1984-85)

William J. Holloway, Jr. American Inn of Court CV – Master
President, 2005-06; and Recipient of inaugural Holloway Award, 2018

Oklahoma Fellow, American Bar Foundation

Benefactor Fellow, Oklahoma Bar Foundation

Member, Magistrate Judge Merit Selection Panel, U.S.D.C. – W.D. Oklahoma

Member, Legal Aid Services of Oklahoma, state-wide fund-raising campaigns (since 2002)

- Recipient, William G. Paul Oklahoma Justice Award, 2016

Recipient, “Lawyer of the Year” Award, Central Oklahoma Association of Legal Assistants. 2001

“The Best Lawyers in America:”

Historic: Mediation, Arbitration, Bet-the-Company Litigation, Commercial Litigation, and Oil & Gas Law

BLA's Oklahoma City Mediation Lawyer of the Year, 2019, 2017, 2015 and 2012

BLA's Oklahoma City Arbitration Lawyer of the Year, 2018, 2016 and 2014

BLA's Oklahoma City Bet the Company Litigation Lawyer of the Year, 2015

BLA's Oklahoma City Alternative Dispute Resolution Lawyer of the Year, 2011

Chambers and Partners U.S.A.: “Star Individual”—Mediation

“Oklahoma Super Lawyers” Top 10 or Top 50 Lawyers in Oklahoma (since 2006)

ADMITTED TO PRACTICE

U.S. Supreme Court

U.S. Court of Appeals for the Tenth Circuit

U.S. District Courts for the Eastern, Northern and Western Districts of Oklahoma

Oklahoma Supreme Court, Oklahoma Court of Appeals, and all Oklahoma District Courts

CIVIC SERVICE AND ORGANIZATIONS (Historic)

Mentor, Positive Tomorrows, Oklahoma City Public Schools

Mentor, Youth Leadership Exchange

Associates Council (Executive Committee member), The University of Oklahoma Associates Program

Edmond Public Schools Foundation (past president, trustee and fund-raising chair)

Oklahoma Foundation for Excellence (Trustee, Management Committee, Executive Committee and Selection Committee; and Chair of Fall Forum Committee)

Diversity Advisory Committee, Oklahoma City University

Executive Committee, Phi Beta Kappa Association of Oklahoma City

Chair, 1995, 40-person community task force appointed by Edmond School Board President and Superintendent of Edmond Public Schools to study in-school/after-school athletics

Coach, Edmond YMCA boys and girls basketball teams (1989-96); and assistant coach, Edmond All Sports Association boys and girls baseball teams (1988-92)

Beta Theta Pi Corporation of Oklahoma (trustee, 1979-94, 2000-2007; corporate secretary, 1985-94; Centennial Committee [chair]; and 2007 Alumnus of the Year)

Director and Treasurer, Edmond Parents for Education

Volunteer, Edmond Cub Scout Pack No. 79 and Edmond Boy Scout Troop No. 386, 1992-2000

PROFESSIONAL ACTIVITIES (Historic)

Member, Mediation and Arbitration Panels: United States District Court for the Western District of Oklahoma

Member, ADR Advisory Committee, United States District Court for the Western District of Oklahoma

Member, American Arbitration Association National Roster of Arbitrators and Mediators

Member, New York Stock Exchange Neutral Panel

Member, FINRA Neutral Panel

Member, Lawyer-Staffed Panel of Oklahoma Court of Civil Appeals appointed by Supreme Court of Oklahoma

Member, Advisory Committee appointed by Judges of United States District Court for the Western District of Oklahoma to review and amend Local Court Rule 43 dealing with court-annexed arbitration

Author, Review: Haig, Business and Commercial Litigation in Federal Courts (2d. ed.)

Author, "Alien Ownership of Oklahoma Urban Real Property," 50 Okla. B.J. 2439 (1979)

Author, "Judgment Enforcement Against Real and Personal Property: Practical Considerations," 61 Okla. B.J. 3402 (1990)

Co-Author, Oklahoma Bar Association pamphlet entitled "U.S. Constitution Fact Sheet," 1987

Instructor, various Oklahoma Bar Association CLE seminars in Tulsa and Oklahoma City; and various Oklahoma County Bar Association Bench and Bar Conferences and CLE presentations: Oil and gas law, legal ethics, and ADR topics

Guest lecturer, University of Oklahoma College of Law and Oklahoma City University School of Law:

Various mediation and alternative dispute resolution presentations

Member, Board of Visitors of The University of Oklahoma's Honors College