

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
EUGENE DIVISION**

Robert T. DeVaney, et al.

Plaintiffs,

v.

Davis Wright Tremaine LLP, a Washington
limited liability partnership,

Defendant.

Civil No. 10-CV-6134-HO

**DECLARATION OF KIT A. PIERSON IN
SUPPORT OF MOTION FOR AN
AWARD OF ATTORNEYS' FEES AND
EXPENSES**

Ken and Patricia Houghmaster, et al.

Plaintiffs,

v.

K&L Gates LLP, a Delaware limited liability
partnership; and Thompson & Knight LLP, a
Texas limited liability partnership,

Defendant.

Case No. 10-cv-6321-HO

I, Kit A. Pierson, declare:

1. I am an attorney and a partner at the law firm of Cohen Milstein Sellers & Toll PLLC, one of Plaintiffs' Counsel in the above-captioned action. I submit this declaration in support of Plaintiffs' Motion for an Award of Attorneys' Fees and Expenses. I make this declaration based on my personal knowledge, except where otherwise indicated.

2. Attached hereto as Exhibit A, is a true and correct firm resume for Cohen Milstein showing Cohen Milstein's extensive experience in class actions matters, including securities and

other complex litigation.

I. Background

3. My personal background is as follows. I was born in Eugene, Oregon in 1957 and later graduated from South Eugene High School in 1975. After received a B.A. *magna cum laude* from Macalester College in St. Paul, Minnesota in 1979, I attended the University of Michigan Law School and received my J.D. in 1983. I graduated *magna cum laude*, served as a Note Editor on the *Michigan Law Review* and received the Henry M. Bates Scholarship Award, awarded to the five seniors who had made the greatest contribution to the law school community.

4. I then served for a year as a judicial law clerk for The Honorable Harry T. Edwards of the United States Court of Appeals for the District of Columbia Circuit from 1983-84, and as a judicial law clerk for The Honorable John Feikens, Chief Judge of the United States District Court for the Eastern District of Michigan from 1984-85.

5. I have been practicing law since 1985, principally as an associate and then partner at the law firm of Jenner & Block and as a partner at the law firm of Heller Ehrman. My work at those law firms involved very complex civil litigation matters. I have had substantial involvement in major class action litigation. I was very involved in the representation of clients such as Microsoft Corporation and 3M Corporation in significant class action matters. I also represented some of the leading professional and trade associations in the United States in other complex civil litigation matters. For several years, I was also the national Chair of Heller Ehrman's pro bono program and was involved in complex civil litigation matters in that capacity.

6. In the Fall of 2008, I briefly formed the Law Office of Kit A. Pierson, PLLC. Shortly after that, I joined Cohen, Sellers, Milstein & Toll, PLLC, a firm I knew well from my years in private practice (I had litigated major class action cases against Cohen Milstein Sellers & Toll, and had also appeared as co-counsel with the firm in a major case). Cohen, Sellers, Milstein & Toll, PLLC is one of the leading class action firms in the United States. The firm's resume, showing its experience in class action litigation, including securities and other complex

civil litigation matters, is attached as Exhibit A. I am a partner at CMST and also chair the firm's Pro Bono Committee.

7. I began working on potential litigation against Davis Wright Tremaine LLP in connection with its work for Sunwest Management, Inc. and affiliated companies in late 2008. This included substantial work, reflected in the time records that accompany this declaration (as well as the declaration of Mr. Adelman), to understand and evaluate the nature of potential claims against Davis Wright Tremaine LLP and the most effective way to litigate those claims. As that matter was investigated and ultimately proceeded to litigation, it was my judgment – shared by co-counsel Herbert Adelman, Justine Fischer and several other Oregon counsel we discussed the matter with -- that this case could most efficiently and effectively proceed on a class action basis. This mechanism is designed to avoid inconsistent adjudications and secure relief for all members of the class in an efficient manner. Moreover, it was my judgment, shared by co-counsel, that the class action approach would be appropriate to maximize the potential recovery for class members against the defendants, to do so in an efficient manner, and to offer the prospect of a complete and final resolution of the case that would likely be required to resolve the matter with the defendants.

8. In connection with this, I had extensive discussions with counsel in Oregon about the most appropriate way to proceed with these claims under Oregon (or federal) law. I also discussed the matter with counsel that were representing other individual investors, including Mr. Esler and Mr. Stephens, and explained our perspective on the legal issues, our views regarding the benefits of class litigation, and our strong interest in proceeding in a cooperative and coordinated manner so that these claims could be litigated as efficiently and effectively as practicable.

9. In investigating this matter, preparing a complaint, and later amending the complaint, we undertook substantial due diligence to make sure that there was a good faith basis for proceeding with the class claims under Oregon law; that the factual allegations were being framed in a manner that was well-supported and would allow the class claims to defeat legal

motions; and that the factual and legal issues presented were appropriate for class treatment and were framed in a manner that would support class certification. Because of the complexity of this matter, this required careful analysis of the factual and legal issues presented by the class claims, and this work is reflected in my time records, as well as the time records after I joined Cohen Milstein, and the time records of co-counsel Justine Fischer and Herbert Adelman.

9. This factual and legal investigation culminated in the filing of a class action complaint by co-counsel Justine Fischer in the Circuit Court of the State of Oregon for the County of Multnomah on February 26, 2009. *D. Kurtz's Canyon Crest, LLC v. Davis Wright Tremaine LLP*, Case No. 0902-02841 (Ore. Circ. Ct. 2009), and the amended complaint that was filed later. Our firm and the Law Office of Herbert Adelman were listed as co-counsel. The First Amended Class Action Complaint included additional class representatives, amended certain claims, and included the law firm of Grenley, Rotenberg, Evans, Bragg & Bodie, PC as a co-counsel in the case. In the course of investigating this matter, and preparing this litigation, we also contacted counsel for many of the individual investors and reiterated our strong interest in working with them in a collaborative and efficient manner.

10. Subsequent to the filing of the class action complaint in February 2009, the Securities and Exchange Commission brought an action against various Sunwest Enterprises alleging securities fraud. *Securities & Exchange Commission v. Sunwest Management, Inc.*, Civ. Act. No. 09-6056-HO (D. Or. March 2, 2009).

11. Several months after the class action complaint was filed against Davis Wright Tremaine LLP, a civil action against that law firm was brought by the Receiver. The Receiver subsequently requested an Order authorizing it to participate in litigation against third parties on behalf of many of the investors (including many members of the putative class in the pending action). The Plaintiffs in the class action sought and were granted leave to intervene in *SEC v. Sunwest Management, Inc.*, *supra*, where they opposed this request. That opposition was based in substantial part on concerns about the lawfulness of the Receiver's proposed relief and potential conflict issued it created. The Receiver, who is also ably represented, had a different

perspective on these issues and there is no need to revisit this debate here. For present purposes, it is sufficient to say that the opposition raised substantial issues and we believed there was an obligation to present these to the Court – so that they could be resolved by the Court as appropriate – based on our judgment that a class action was the appropriate way to proceed and our obligations as counsel for the putative class in the case that was already pending when the Receiver’s action was brought.

12. On June 23, 2009, the Court entered an Order providing, among other things, that (a) the Receiver was “temporarily authorized from the date of entry of this Order until October 15, 2009, to participate in the mediation of third party claims on behalf of those investors not already represented by [certain listed counsel]”; authorizing the Receiver to employ the firms of Esler Stephens & Buckley and Landye Bennett & Blumstein as special litigation counsel to assist the Receiver in mediation; providing that “counsel for Other Represented Investors shall be entitled to participate to the same extent as any other investor’s counsel or counsel for the Receiver” and specifying that “Other Represented Investors have designated Cohen, Milstein, [Sellers] & Toll as their representative counsel for this purpose”; and stating that “[a]ll objections to the right of the Receiver or his counsel to proceed on behalf of any persons other than the Receivership Entities are preserved.” *SEC v. Sunwest, supra* (Doc. 376) (filed June 23, 2009). Consistent with that Order and our responsibilities to the putative class, we evaluated factual information as it was made available (including approximately 25,000 pages of documents we obtained from one of the major brokers; in accordance with our discussions with the Receiver’s counsel, these materials were reviewed and we brought the more significant materials relating to Davis Wright Tremaine LLP to counsel’s attention), so that we could assess its bearing on the claims and defenses (and the reasonableness of a potential settlement during the mediation), and participated in the mediation. These activities are described in the appended time records.

13. As the Court is aware, the mediation ultimately resulted in a settlement. There were extended discussions about the terms of the settlement (which were complex) and its relationship to other pending and/or anticipated litigation. Consistent with the Court’s Order,

other counsel for represented investors designated Cohen Milstein Sellers & Toll to participate in the mediation proceedings on their behalf. Counsel for Davis Wright Tremaine LLP was of the view that the cases should be resolved on a class action basis and we provided class action expertise to all parties involved to negotiate and implement these terms.

14. Since negotiation of the class action settlement, counsel for all parties has looked to our firm's expertise to evaluate the class issues, negotiate an appropriate resolution of those issues, prepare pleadings relating to the class settlement (and approval of the class settlement by the Court), and to help implement the terms of the class settlement.

15. On October 8, 2010, the Court entered a preliminary approval order designating Cohen Milstein Sellers & Toll, and the firm of Esler Stephens & Buckley as the co-leads representing the Plaintiff Class in this litigation. I note in this regard, that our earlier work preparing the class case described above, and the due diligence required to understand the factual and legal issues presented, has been instrumental to our ability to fulfill these responsibilities.

16. Subsequent to resolution of the Davis Wright Tremaine LLP litigation on a class basis, the litigation against K&L Gates and Thompson & Knight were settled on a similar basis. Notably, the pleadings in those cases seeking the Court's approval of a class action settlement, and setting forth the steps to effectuate that (such as class notice), substantially duplicated (with some additions) the class pleadings we had prepared earlier to effectuate the class settlement involving Davis Wright Tremaine LLP. Because of Cohen Milstein's class certification expertise, Cohen Milstein took responsibility for preparation of the final approval papers for the K&L Gates and Thompson & Knight cases, which are also being filed today.

17. The culmination of these efforts – and efforts by other counsel – are settlements that provide very significant benefits to the class and represents a fair and very favorable resolution of the claims described above. Getting to this point involved challenges, and sometimes reasonable differences between very able counsel. As counsel that have believed from the outset that class action treatment was appropriate – a view now reflected in the settlement of this (as well as the cases against other law firms which eventually proceeded and

were resolved on a class basis) and the pleadings filed in support of approval of the class settlements – we have taken our responsibilities to the putative class seriously and tried to proceed in a manner that fulfills those responsibilities. These efforts, as well as the efforts of other very skilled counsel on behalf of both Plaintiffs and the Receiver, have led to outstanding results for the Plaintiff Class.

18. Since the outset of my involvement in this case, I have proceeded – as has Cohen Milstein Sellers & Toll, the Law Office of Herbert Adelman, the Law Office of Justice Fischer (and, I believe, several of the other firms involved), on a contingent basis – i.e., we have received no compensation to date for our work in this matter since October 2008 and have understood that we would only be compensated if the matter was resolved in a manner favorable to the Plaintiffs. During this period of more than two years, we have not been compensated for our time spent on this matter or the out-of-pocket expenses involved.

19. I have appended as Exhibits B and C the lodestars for my work at the Law Office of Kit A. Pierson (Exhibit B) and the law firm of Cohen Milstein Sellers & Toll (as Exhibit C). The declarations of Herbert Adelman and Justine Fischer, and their accompanying lodestars, are also being filed today. The manner in which Mr. Adelman's and Ms. Fischer's records were maintained and prepared are described in their separate declarations.

20. The time records in Exhibit B covers the work I performed on this matter at the Law Office of Kit A. Pierson from October 2008 through early February 2009. Although I have been admitted to practice since 1985, and my normal billing rate in 2008 was \$705 an hour, the billing rate has been reduced for purposes of calculating lodestar in this case to \$450 an hour. Using this discounted rate, my total lodestar on this matter during the time period I worked at the Law Office of Kit A. Pierson was \$53,685 (at the higher rate, the lodestar for this period would be \$84,106.50). The details underlying this lodestar are set forth in Exhibit B.

21. The time records in Exhibit C encompass the work that I, and other attorneys and professionals, at Cohen Milstein Sellers & Toll performed on this matter from February 2009 through the present. For purposes of calculating this lodestar, the discounted rates set forth in the

following charts have been used. I have included the firm's standard rates (based on current rates) for comparison purposes, but lodestar has been calculated on the discounted rates reflected below.

Name	Title	Year Admitted	Total Hours	Standard Rate	Adjusted Rate	Total Fees (Standard Rates)	Total Fees (Reduced Rates)
Steven Toll	Partner	1975	55.75	\$785	\$450	\$43,763.75	\$25,087.50
Kit Pierson	Partner	1985	611.9	\$710	\$450	\$434,449	\$275,355
Daniel Sommers	Partner	1986	2.25	\$680	\$450	\$1,530	\$1,012.50
Joshua Devore	Partner	2000	47.25	\$495	\$450	\$23,388.75	\$21,262.50
Karen Handorf	Of Counsel	1975	16.25	\$675	\$450	\$10,968.75	\$7,312.50
Daniel Sigelman	Of Counsel	1980	404.75	\$610	\$450	\$246,897.50	\$182,137.50
Joshua Kolsky	Associate	2007	181.5	\$350	\$300	\$63,525	\$54,450
Anna Ryon	Associate	2008	213.5	\$295	\$275	\$62,982	\$58,712.50
Amos Presler	Law Clerk	n/a	61.75	\$230	\$200	\$14,202.50	\$12,350
Tyler Gafney	Legal Assistant	n/a	204	\$220	\$100	\$44,880	\$20,400
Joyce Zhu	Legal Assistant	n/a	8	\$220	\$100	\$1,760	\$800
Thomas Carr	Information Technology Specialist	n/a	29	\$170	\$100	\$4,930	\$2,900
Totals			1835.9			\$953,177.75	\$661,780

22. Cohen Milstein bills separately for any expenses and such charges are not duplicated in the billing rates (Kit A. Pierson did not incur expenses prior to joining Cohen Milstein for which compensation is being sought). The expenses incurred in this action are reflected on the books and records of Cohen Milstein and are of the nature and kind that the firm normally incurs in securities litigation. These books and records are prepared from expense vouchers, check records, credit card receipts and other source materials and represent an accurate

recording of the expenses incurred.

23. Throughout this case, Cohen Milstein has exercised care to limit travel expenses and is requesting reimbursement for counsel's use of coach class air fare, lodging in local hotels and reasonable meal expenses. These expenses are detailed in Exhibit D.

24. Cohen Milstein Sellers & Toll's total lodestar on this matter during the time period since February 2009 has been \$661,780 in fees and \$54,047.95 in expenses (using the firm's normal rates, the fees would be \$953,277.75). The details underlying this lodestar are set forth in Exhibit C.

25. The total lodestar from our co-counsel, Herbert Adelman, in connection with this matter, and the details underlying that lodestar, are described in his declaration and the exhibit attached thereto. Mr. Adelman's total lodestar on this matter has been \$240,862.50 in fees and \$8,072 in expenses. Mr. Adelman began practicing law in 1958. For purposes of calculating his lodestar in this matter, a rate of \$450/hour has been used.

26. The total lodestar from our co-counsel, Justine Fischer, in connection with this matter, and the details underlying that lodestar, are described in her declaration and the exhibits attached thereto. Ms. Fischer's total lodestar in this matter has been \$62,160 in fees and \$721.25 in expenses. Ms. Fischer's lodestar has been calculated based on an hourly rate of \$400/hour, which her Declaration explains is her normal rate.

27. We understand that separate fee applications are being filed by other counsel involved in this litigation, including the law firm of Esler Stephens & Buckley, Landye Bennett & Blumstein, and others. Those firms contributed substantially to the outstanding results achieved in this litigation (and our understanding is that they did so, like the attorneys described herein), on a contingency fee basis.

I declare under penalty of perjury that the foregoing is true and correct. Executed on the 21st day of December, 2010.

/s/ Kit A. Pierson

Kit A. Pierson