

EXHIBIT C

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

DAVID CRUSON AND JOHN DENMAN

Plaintiffs,

v.

JACKSON NATIONAL LIFE INSURANCE
COMPANY

Defendant.

Civil Action No. 4:16-CV-912-ALM

JURY TRIAL

§
§
§
§
§
§
§
§
§
§
§
§
§
§
§
§
§
§
§
§
§
§

**DECLARATION OF LEWIS T. LECLAIR IN SUPPORT OF MOTIONS FOR FINAL
APPROVAL OF CLASS-ACTION SETTLEMENT AND FOR ATTORNEYS' FEES,
SERVICE AWARDS, AND COSTS**

I, Lewis T LeClair, declare and state as follows:

1. I am a shareholder of the law firm of McKool Smith, P.C., hereinafter referred to as (“McKool Smith”). I submit this declaration in support of Plaintiffs’ Motions for Final Approval of Class-Action Settlement and for Attorneys’ Fees, Service Awards, and Costs. I make this Declaration based on my personal knowledge, and if called as a witness, I could and would competently testify to the matters stated herein.

2. I have been admitted to practice in Texas since 1976 and in California since 1977. My practice for the past forty years has consisted entirely of complex commercial litigation of varying types, including antitrust, securities, class, derivative, and intellectual-property. I have been involved in certain notable matters, including serving as lead counsel for the Enron Creditors’ Committee in a number of matters litigated in the Southern District of Texas.

3. The practice of McKool Smith is limited to complex commercial and intellectual-property litigation. Our firm is a nationally recognized trial boutique, having obtained more top-one hundred jury verdicts than any other law firm in the country. In 2019, Benchmark Litigation designated McKool Smith “Texas Law Firm of the Year.” The firm has served as one of the lead counsel or liaison counsel in a number of class-action or derivative lawsuits in both state and federal courts across the country, including:

- *Dial Corporation, et. al. v News Corporation, et. al.* , Civil Action No. 13-cv-06802-WHP (United States District Court for the Southern District of New York (LeClair and McKool Smith co-lead trial counsel and one of four class counsel)
- *Meyer v Kalanick*, Case No. 1:15 Civ. 9796 (United States District Court, Southern District of New York)(JSR) (LeClair and McKool Smith one of lead firms for Plaintiff putative class)
- *In re Six Flags Entertainment Corporation Derivative Litigation*, 4:20-cv-00262-P (United States District Court for the Northern District of

Texas) (LeClair and McKool Smith liaison counsel for Plaintiff putative class)

- *Hatchett v Henry Schein Inc., et. al.*, 3:19-cv-00083-NJR (United States District Court for the Southern District of Illinois) (LeClair and McKool Smith co-lead counsel for Plaintiff putative class)
- *Parrish et. al. v National Football League Players Association*, Case No. C07-0943 (United States District Court Northern District of California) (LeClair and McKool Smith co-lead counsel for Plaintiff class)
- *Garcia et. al. v DirectTV and Hughes Electronics, LASC Case No. BC259174 (Los Angeles County Superior Court, State of California)* (LeClair and McKool Smith served as co-lead counsel for the plaintiff)
- *Capitol Entertainment of Northern Virginia, Ltd. and Video Capitol Rental, Inc. v. Daniel Gilbert, Wayne L. Bledsoe, Shirley A. Bledsoe, Bob Gerber, David A. Golden, M.D., Max Meyer, Trustee, Max Meyer Recv. Living Trust, Stephen J. Obermeier, M.D., Cletus C. Schenk and W. Thomas Veal, Jr., D.D.S., Inc., Money Purchase Pension Plan and Profit Sharing Plan, W.T. Veal, Trustee*, No. 95-06471 (District Court, Dallas, County, Texas, 44th Judicial District) (LeClair and McKool Smith served as co-lead counsel for the plaintiffs)
- *In re Affiliated Computer Services Derivative Litigation*, Cause No. 06-03403 in the 193rd District Court of Dallas County, Texas (consolidating *Huntsinger v. Deason*, et al., Cause No. 06-03403 in the 193rd District Court of Dallas County, Texas; *Oury v. Deason*, et al., Cause No. 06-03872 in the 162nd District Court of Dallas County, Texas; and *Anchorage Police & Fire Retirement System v. Deason*, et al., Cause No. 06-0526S in the 14th District Court of Dallas County, Texas) (LeClair and McKool Smith served as lead counsel for certain defendants)
- *In re Affiliated Computer Services Derivative Litigation*, Master File No. 3:06-CV-1110-M (consolidating *Alaska Electrical Fund v. Deason*, et al., Cause No 3-06-CV-1110-M in the United States District Court, Northern District of Texas, Dallas Division and *Lunceford v. Rich*, et al., Cause No. 3-06-CV-1212-M in the United States District Court, Northern District of Texas, Dallas Division) (LeClair and McKool Smith served as lead counsel for certain defendants)
- *Brandin v. Deason*, et al., Civil Action No. 2123N in the Court of Chancery of the State of Delaware in and for New Castle County

(LeClair and McKool Smith served as lead counsel for certain defendants)

- *In re: Search Financial Services Acceptance Corp., MS Financial, Inc., Search Funding Corp., Search Financial Services Inc.*, No. 398-32129-RCM-11 (United States Bankruptcy Court for the Northern District of Texas, Dallas Division) (LeClair and McKool Smith served as lead counsel for a defendant)
- *Warmack-Muskogee Limited Partnership, individually and on behalf of all others similarly situated v. PricewaterhouseCoopers, LLP, a/k/a PricewaterhouseCooper Global, Ernst & Young, LLP, Ernst & Young International, Inc., Cap Gemini Ernst & Young U.S., LLC, KPMG, LLP, and KPMG Consulting, Inc., and Does 1 through 3*, No. DR-2001-504-3 (Circuit Court of Miller County, Arkansas) (LeClair and McKool Smith served as lead counsel for a defendant)
- *7547 Corporation and Sonem Partners, L.P. v. P&P Equity Co., Ltd., Parker & Parsley, Ltd., Midland Management Partners, L.P., Scott D. Sheffield, Herbert C. Williamson, III and Timothy M. Dunn, Defendants and Parker & Parsley Development Partners, L.P., Nominal Defendant*, No. 3:90-CV-2038-P (United States District Court for the Northern District of Texas, Dallas Division) (LeClair served as lead counsel for the defendants)
- *R&D Business Systems, et al. v. Xerox Corporation*, No. 2:92-CV-042 (United States District Court, Eastern District of Texas) (McKool Smith served as co-lead counsel for the plaintiff)
- *Kopies, Inc. et al. v. Eastman Kodak Company*, No. C94-0524-AWT (United States District Court, Northern District of California) (McKool Smith served as co-lead counsel for the plaintiff).

Settlement

4. I have been personally involved in this litigation since the beginning of the matter in 2016. My co-lead counsel, Mr. Gary Corley, met with a number of clients to discuss the proposed case and claims against Jackson National Life Insurance Company. After undertaking significant due diligence, which included talking with experts in the industry and financial advisors for certain of the then-prospective Plaintiffs, McKool Smith decided to take on this case

on a contingent-fee basis. Both firms were directly involved in discovery and motions practice, the interlocutory appeal of class certification, and the settlement negotiations.

5. I coordinated our firm's role and managed the legal and procedural aspects of the litigation, including supervising all the briefing and presentations to the Court with respect to the motion for class certification, motion to dismiss, and motion for summary judgment. In that role, I participated in strategy sessions with other counsel, experts, financial advisors, and certain Class Members. I revised key pleadings, took one key deposition, and assigned other depositions to lawyers in our firm. I also supervised discovery by associates and paralegals. Our firm represented each of the named Plaintiffs at their depositions, including by reviewing all the relevant documents and preparing the witnesses for the depositions. Our firm also reviewed hundreds of thousands of pages of documents.

6. Our firm served as the principal liaison with expert witness EJ Janik. I led the preparation of his expert report and assisted in the preparation for the defense of his deposition. I led the settlement discussions with Defendants' counsel, negotiated additional discovery on an informal basis with Defendants' counsel relating to damages, extensively analyzed the database spreadsheets on withdrawal charges produced by Jackson, supervised associate and expert analysis of that data, and prepared for settlement negotiations.

7. I personally took the lead in briefing the motion for class certification and in opposing motions to dismiss and motions for summary judgment.

8. As we approached the date for class certification, Class Counsel faced a difficulty with certain named Plaintiffs, who, in addition to having against Jackson the claims asserted by the Class, had other individual claims against Jackson. Because of the statute of limitations, those individual claims needed to be asserted either in this case or in separate litigation. After

conferring extensively with Mr. Corley, I determined the Class was best served by severing the individual claims. For that reason, Class Counsel decided to dismiss those Class Members as named Plaintiffs. At the same time, we added one additional named Plaintiff, John Denman.

9. I personally took the lead in opposing Defendants' Rule 23(f) petition to the Fifth Circuit and then, once the petition was granted, took the lead in the appeal, including by handling oral argument.

10. Following the Fifth Circuit's vacation of this Court's class-certification order, I worked closely with Mr. Corley in determining the best course of action for the Class. We considered, for example, bringing actions in multiple jurisdictions. Meanwhile, I personally took the lead in further negotiations with Jackson about the future course of the litigation and whether the best interests of all parties would be best served by continued litigation or settlement.

11. Once Jackson agreed to have detailed and substantive discussions about settlement, Class Counsel requested further detailed transactional data from Jackson. Class Counsel needed to properly evaluate damages and the possible range of settlement. Jackson ultimately produced two massive spreadsheets that contained detailed information on the entire Class. Our firm did a detailed analysis of this data, working with an attorney of Gary Corley's office and a consultant. Based on that detailed analysis, I had multiple phone calls with Defendants' counsel. During those calls, I asked (and counsel answered) my questions about the data and certain gaps of information in the spreadsheets.

12. Class Counsel learned that Jackson did not maintain any readily accessible records of the actual calculations of the withdrawal charges for each customer withdrawal. Rather, the withdrawal charges were calculated via a dynamic computer process based on variables and inputs that were either not maintained or not readily accessible. Class Counsel

were unable to replicate the actual percentage charge applied by Jackson on each withdrawal calculation. Jackson maintained the date of the individual contracts but not the dates of the contracts compared to the withdrawal dates. So determining the proper withdrawal-charge percentage was difficult to connect to the charge actually applied. Accordingly, after significant effort to consider various ways of calculating the losses of individual Class Members, Class Counsel determined that a pro rata method was the most equitable way of apportioning damages among Class Members.

13. Once Class Counsel analyzed the data, Class Counsel and Defendants' counsel believed it fruitful to employ Heshia Abrams. Ms. Abrams is a skilled mediator with more than thirty years of experience. She graduated with honors from the Florida State University College of Law. She specializes in resolving domestic and international disputes, in subject matter as diverse as consumer class actions, contract, intellectual property, antitrust, securities, and the environment. And she is a well-published author and frequently invited speaker.

14. The discovery and mediation that occurred after the Fifth Circuit's decision ultimately led to this Settlement, a true and correct copy of which is attached hereto as Exhibit A-1.

15. Having conducted an extensive cost-benefit analysis of the litigation as a whole, I believe this Settlement is the best possible result for the Class. It is fair, reasonable, adequate, and non-collusive. To pursue this case to trial, Class Counsel would likely have incurred hundreds of thousands of dollars in expert fees. More importantly, though, because the contemplated strategy involved multiple actions in multiple jurisdictions, Class Counsel were looking at significant costs, which would have reduced the Class's ultimate recovery. The baseline notice comports with due process and aims to notify as many Class Members as

possible. Class Counsel have responded to all telephone messages received, and most questions were basic or motivated by curiosity about the case. I also received from one Class Member a written objection, stating the Settlement should be renegotiated to generate a greater recovery. I intend to advise this Class Member that she can formally object or opt out and advise her of the proper mechanics for doing so. Evidenced by the significant number of phone calls I have personally received from Class Members, the notice has been effective. Overall, the reactions of Class Members with whom I have spoken have been quite positive.

16. Class Counsel are undertaking all reasonable efforts to generate as great a response rate as possible and to get the agreed recovery amount into Class Members' pockets. The response rate in consumer class settlements is typically low, but here, we hope and expect to outpace an "average" consumer settlement. Because certain Class Members stand to gain more than others, moreover, Class Counsel directed Kroll to send additional written notice to Class Members with greater financial interest in the Settlement.

Attorneys' Fees

17. McKool Smith has requested an attorneys' fee award of \$1,500,000 for the work done by McKool Smith. As described below, I believe that the amount is reasonable. I briefly summarize the credentials of our firm's lawyers who worked on this matter before turning to my billing and expensing methodology.

18. Rudy Fink was the primary associate who worked on this matter. Rudy maintained his office in Dallas but had substantial experience in the Eastern District of Texas. Earlier in his career, Rudy clerked for three different federal judges: the Hon. William C. Bryson of the U.S. Court of Appeals for the Federal Circuit and the Hon. J. Rodney Gilstrap and the Hon. Roy S. Payne of the U.S. District Court for the Eastern District of Texas, Marshall

Division. During his clerkships, Rudy was responsible for more than 1,000 complex civil cases and actively participated in hundreds of hours of judicial proceedings, including 13 trials, which covered subject matter from personal injury to patents. Rudy served as liaison with co-counsel and with Defendants' counsel and undertook many different tasks, including gathering and producing the class representatives' documents, working with the clients to prepare interrogatory answers, and preparing and presenting witnesses at depositions. In addition, he assisted in all other aspects of the case, such as brief drafting, expert discovery, and trial preparation. Rudy graduated from Rice University with a degree in computer science, so his services were invaluable in understanding the complex Jackson computer systems.

19. Lisa Houissere is a principal in McKool Smith's Houston office. Lisa worked on the case throughout mediation and settlement. Lisa graduated from Vanderbilt University in 2002 and received her law degree from Southern Methodist University in 2007. Lisa has considerable experience in complex matters and was instrumental in preparing for mediation and settlement.

20. Charles Fowler was an associate in the McKool Smith's Austin office. He graduated from Texas A&M University in 2009 and received his law degree from the University of Texas in 2012. He did considerable work researching, drafting pleadings and motions, and preparing for depositions and trial.

21. Chelsea Priest was an associate and appellate specialist in McKool Smith's Dallas office. After graduating from Stanford Law School, she served as a law clerk for Chief Judge Merrick B. Garland in the U.S. Court of Appeals for the D.C. Circuit, a law clerk for Chief Judge Barbara M. G. Lynn, an extern for Judge Michelle T. Friedland in the U.S. Court of Appeals for the Ninth Circuit, and a page for the U.S. House of Representatives. Her work in this matter

primarily related to briefing the motion for class certification and the opposition to the appeal therefrom.

22. Brianna Messina is an associate in McKool Smith's New York office and worked on the motion for preliminary approval of this Settlement. While in law school, Brianna served as an articles editor for the University of Pennsylvania Law Review and as a teaching assistant for an evidence & trial practice course. She was the academic & mentoring co-chair for the Latinx Law Students Association and a competitor for the Penn Law Mock Trial Team.

23. Patrick Pijls is an associate in McKool Smith's Dallas office. Patrick graduated from Harvard Law School, where he earned a Dean's Scholar Prize in Federal Courts, awarded to the highest-performing students in the course. Patrick helped brief the motions for final approval of this Settlement and for attorneys' fees, costs, and service awards. Before joining the firm, Patrick clerked for the Honorable Gerald B. Tjoflat of the U.S. Court of Appeals for the Eleventh Circuit. His time is not billed to the Class.

24. McKool Smith incurred 2,977.60 hours in total attorney and paralegal time in this matter. I regularly review and adjust billing records for complex commercial litigation. Based on my extensive experience with class and complex litigation, I reviewed these billings to ensure the work done was reasonable, relevant to this matter, and inured to the benefit of the Class. Specifically, I reviewed all my firm's daily time records and eliminated any entries that were not sufficiently supported or were otherwise determined by me to be inappropriate for billing. After accounting for those entries, the remaining billed time of McKool personnel in this matter is 2,827.10 hours, resulting in a haircut of about 5%.

25. These hours were billed at my firm's standard hourly rates for each timekeeper. Our firm regularly litigates in the Eastern District of Texas. Based on that experience, I believe

these rates to be within the range of prevailing market rates within the Eastern District of Texas for similar services by lawyers of reasonably comparable skill, experience, and reputation.

26. I eliminated the billings of any timekeeper who billed fewer than ten hours to the matter.

27. The fees and hours associated with each timekeeper are summarized in the chart below, and detailed partially redacted entries are appended to this declaration as Exhibit A-2:

Title	Timekeeper	Values		
		Sum of Work Hr	Sum of Std Amt	Sum of Avg Rate
Principal	Houssiere, Lisa	85.10	\$70,117.00	\$823.94
	LeClair, Lewis T.	891.00	\$847,536.00	\$951.22
Principal Total		976.10	\$917,653.00	\$940.12
Associate	Fink, Rudy	1,400.90	\$910,998.50	\$650.30
	Messina, Brianna A.	13.10	\$6,091.50	\$465.00
	Priest, Chelsea	77.00	\$38,332.00	\$497.82
Associate Total		1,491.00	\$955,422.00	\$640.79
Paralegal	Bayliss, JoAnne	40.00	\$12,058.50	\$301.46
	Curry, Jan D.	91.30	\$28,110.50	\$307.89
	Mendez, Maria S.	207.70	\$60,251.50	\$290.09
	Mow, Jodie L.	21.00	\$6,869.00	\$327.10
Paralegal Total		360.00	\$107,289.50	\$298.03
Grand Total		2,827.10	\$1,980,364.50	\$700.49

28. The final resulting lodestar is, in my experience, very reasonable (if not low) for the role played by our firm in this matter.

29. This matter was extraordinarily complex, requiring significant expertise in issues of personal jurisdiction, class certification, contracts, and insurance.

30. The matter was hard-fought from the very beginning, entailing significant motion practice and a vigorous defense on all issues by Jackson. Liability itself was hotly contested, with Defendants disputing both the procedural and substantive aspects of Plaintiff's affirmative case. After prevailing on key issues in this Court, moreover, Plaintiffs had to fight a difficult battle on interlocutory appeal to the Fifth Circuit and were then forced to define and pursue a new strategy upon remand from the court of appeals.

31. McKool Smith has prosecuted this litigation on a contingent-fee basis and has been at risk that it would be unable to recover from the litigation. In the more than four years that this case has been pending, McKool Smith has devoted substantial time and resources to this matter and has foregone other legal work for which it would have been compensated.

32. Because McKool Smith maintains a substantial contingency practice that requires the simultaneous investment of millions of dollars in contingent time and costs, our firm has entered into certain financial arrangements to manage cash flow. In addition to maintaining a line of credit with a major financial institution, our firm has an arrangement that allows it to receive advances of up to half the anticipated investment in certain cases, with amounts advanced then returned from the recoveries across all the cases. McKool received significant advance payments, including \$1,100,000 as an advance for the anticipated investment in this matter.

33. As the cases have matured, however, contingent recoveries have now fully covered almost all the amounts advanced, and recent recoveries will cover all remaining advances. Although certain new amounts might be advanced for the few remaining matters, none will be advanced for this matter. As a result, the full investment in this matter is at risk.

34. These arrangements are designed to hedge our firm's risk on this case and other contingent cases, and for that reason, I disclose them to the Court. Because our firm seeks no multiplier on its lodestar, though, the reduction of risk reflected by these arrangements should have no impact on the appropriate amount of fees the firm now seeks.

35. Finally, I have already outlined the contributions of my firm and the credentials and experience of our lawyers. What is more, though, our billings reflect an efficient use of legal resources. Throughout the litigation, I delegated as much work as possible to paralegals and associates, each of which bill at lesser rates than I do.

Costs

36. McKool Smith incurred \$181,396.66 in litigation costs in this matter, an itemization of which is appended to this declaration as Exhibit A-3. I have thoroughly reviewed these costs to ensure each entry is reasonable, relevant to this matter, and inured to the benefit of the Class. Specifically, I reviewed all my firm's daily costs records and eliminated any entries that were not sufficiently supported or were otherwise determined by me to be inappropriate for billing. For example, I eliminated certain categories of expenses that I decided not to charge to the Class at all, such as communication charges, meals, and other miscellaneous expenses. The charges are listed as actual costs with no administrative overhead applied. Internal costs are based on reasonable estimates of charges. For example, data-hosting charges are estimated at amounts less than or equal to market charges for outside services of this type. The charges are the same as those paid by hourly clients. The expenses incurred in this action are reflected in the books and records of my firm, which are prepared from expense vouchers, check records, and other source materials. The books and records represent an accurate accounting of the expenses incurred.

I declare under penalty of perjury pursuant to 41 U.S.C. § 1746 that the foregoing is true and correct.

Executed on April 27, 2021 in Dallas, Texas.



Lewis T. LeClair