AUGUST 30, 2005

(Whereupon the court convened and the following proceedings were entered of record.)

THE COURT: 00 CV 4142, Brody, et al. v. Hellman, et al. Would the attorneys please come up to the podium and enter your appearance? Every time you address the Court, state your name so whoever might have to transcribe this can identify who's speaking.

MR. DOWD: Good morning, Your Honor, Michael Dowd, from the Lerach, Coughlin law firm. I have with me today two of my partners, Keith Park, and Laura Andracchio.

MR. PARK: Good morning, Your Honor.

MS. ANDRACCHIO: Good morning, Your Honor.

MR. LURIE: Good morning, Your Honor, Jordan Lurie, Weiss and Lurie, co-lead Counsel for Plaintiffs.

MR. SHUMAN: Good morning, Kip Shuman of Dyer and Shuman.

MR. WESTERMAN: Good morning, Your Honor, Jeff Westerman, Milberg, Weiss, co-lead Counsel for the class.

MR. THEIS: Good morning, Larry Theis of Musgrave and Theis, LLP, representing all Defendants. With me are Bobby Musgrave of Musgrave and Theis and Steven Perfrement and Andy Holloman of the Qwest Law Department.

MR. KENNEDY: Good morning, Your Honor, I'm Curtis Kennedy, I'm appearing on behalf of objectors, Association of U.S. West Retirees, Mimi Hull, Eldon Graham, and Hazel Floyd.

THE COURT: Thank you. Are there any other shareholders here who are not represented by counsel and representing themselves? If so, please come forward and state your name.

All right. Mr. Kennedy, does it -- you want to intervene; is that right?

MR. KENNEDY: Yes, sir.

THE COURT: And that request is granted. So you're in the case for whatever purposes you wanna be in the case. Mr. Kennedy, why don't we start with you. I've read your objection and I'm gonna be happy to hear anything else that you might say and any response that counsel has.

MR. KENNEDY: Thank you, Your Honor. I appreciate you allowing me to go first. I'm here, of course, I'm here -- it's going to generate some debate, and I understand that I make no friends here today but I'm here to impress upon the Court that what we would like to see is more of the settlement fund go to the shareholders particularly the fact that there are so many shareholders that are retirees and former employees of

U.S. West who were dependent on the dividend which was the subject of this lawsuit. And I wanna point out that when the eight pounds of --

THE COURT: Excuse me, Counsel. On the side, those things pull out if that helps you.

MR. KENNEDY: Oh, okay, I have room here. Thank you. When the eight pounds of paper was dropped on my porch, it caught me by surprise; and I have, indeed, gone through every piece of paper. And what I found is that there are about 31 pages that are really important to this Court for the determination of the attorney's fees application.

One of the things that has been revealed to me by this paperwork is there still is some question about the source of the settlement which was an issue for the retirees. They wanted to know who's paying the $50 million. Now, at the time the notice was published, there wasn't any indication clearly about that other than to say 25 million was coming from insurance funds.

The paperwork submitted by the two sides, the Plaintiffs and Defendants, are kind of contradictory. The Plaintiffs' paperwork says that 25 million is coming out of U.S. West insurance funds and 25 million is coming from Qwest operating revenues. The next day I received some paper from Defendants' Counsel with an affidavit

attached to it that says that the whole amount is coming out of U.S. West insurance proceeds. I think that indicates that -- excuse me, it's just the opposite.

MR. THEIS: I just wanna clear it up, Your Honor, so there's not a lot of time spent on that. That footnote in Plaintiffs' -- is actually Plaintiffs' filing there's a Footnote 8 that says there was a communication that all of the funding was coming from insurance proceeds. That is due to a miscommunication between Mr. Dowd and myself, but the affidavit that was filed by Qwest Risk Management, David Hellman, and submitted to the Court last Tuesday has the exact figure and it is approximately 25 million from insurance proceeds and approximately 25 million from Qwest. And that's the amount that Mr. Dowd agrees with, Your Honor.

MR. KENNEDY: Okay. With that explanation, I think there's still -- it indicates that the notice that was sent out doesn't adequately inform everyone what the source of the funds are, because we're now only getting an explanation that the information is inaccurate or is not complete. But be as it may, what we are really here focusing on, we understand this is a hard job to get money out of a company with a shareholders lawsuit. We understand that. And these guys have worked hard. There's no doubt about it and they deserve to be paid.

But we think that what they've asked for is nothing less than a windfall. And what they're asking for is essentially 2. times or a little over 2. times every hour that they say they spent on this case, every hour including all the paralegals. And when you even look at some of the paperwork that they've submitted, they don't give any detail. They don't explain what projects were done by the partners versus the associates or the paralegals. They just throw in a lump sum, and it just kind of reflects a cavalier attitude that this doesn't really matter. We're just gonna go for the 30 percent and it doesn't matter how much we're being enriched whether it's two times or whether it's two and a half times. We're just gonna go for the 30 percent.

And what I wanted to point out is that their own paperwork submitted by the Plaintiffs, they provided us an appendix of cases of unreported authorities and there's an interesting case that they rely upon. It's Exhibit 3. It's called the Denny v. Jenkins and Gilcrest case. And Jenkins and Gilcrest as many would know was a law firm that was sued and there was this huge settlement involving some wrongdoing by the law firm and some other issues. And what the New York Judge decided was that the request for attorney's fees of 30 percent was really a windfall and no doubt in that case, the Defendants were,

the law firm was objecting to the windfall request and the Court cited a bunch of cases in Exhibit 3. In fact, you can look at page 78 of the Lexis opinion. At the very top it says page 78 and in there is this huge footnote of all these cases where the Courts are saying, You know, when we get a common fund that's 50 million and more, we start to reduce the percentage. We don't just use a benchmark of 30 percent.

In fact, most of the Courts, the traditional amount is somewhere between 12 to 20 percent. Their own case law supports that. The biggest case, it's in the appendix, Exhibit 3. That's where we are on this. We think that somewhere between 12 and the upper amount of 20 percent, that's a lot of money. That's 1.53 times the hourly rate and that's just assuming that everything's accurate and that there's no mistakes and that every hour ought to be paid at the rate that they're asking for, for everything that they did. One and a half times that equals $10 million. That's 20 percent of the fund.

They have also included in their appendix Exhibit 19. And there's a table in it. And if you look at that table on Exhibit 19 which is Table 9, it says the study by that outfit is that Plaintiffs' attorney's fees and expenses, the total value of fees and expenses declines as a percentage when settlement values exceed

$50 million. And their own table shows that the fees and expenses are generally around 20.05 percent when you get a settlement fund of $50 million.

We don't have any real clue as to the specific tasks done because unlike in other cases, the attorneys haven't provided contemporaneous detailed time reports. But astonishingly, they want the Court to approve of some hundred thousand dollars expenses for photocopying, but they didn't photocopy their time records and submit that to the Court.

That wouldn't have been much more expense for them to do that and provide it and let us look at it and double-check it and determine whether all of this is reasonable. Are they billing for time riding taxis to the airport, getting on airplanes? Are they going to a hearing for 15 minutes and then billing out for the whole day? We'd like to know and is that fair to charge to the settlement class?

When you look at what they're asking for essentially, most of these partners are seeking more than $1,000 per hour and that shocks the conscience of my clients, the objectors, and many of the retirees. And I will have to say that I haven't just represented four people here. I have gone and done some due diligence. I've gone to Fargo. I've gone to Bloomington,

Minneapolis; I've gone to Helena, for example, and I have met with hundreds of shareholders investors that are affected by this. Many of whom are only gonna get payment representing the 100 to 300 shares that they own. It's not even worth their time to object and to get involved because they're gonna get a check for 10 or 15, maybe $20.

But collectively, they've all expressed this to me that, you know, there really ought to be more of this --

THE COURT: Excuse me, sir, you -- you represent four people; is that right?

MR. KENNEDY: And the Association of U.S. West Retirees who are also 20,000 strong, 90 percent of them were shareholders and owned U.S. West stock before --

THE COURT: But do we --

MR. KENNEDY: -- the merger.

THE COURT: -- know if all those people in the Association are objecting?

MR. KENNEDY: They haven't formally objected with the paperwork, no, Your Honor. I just -- I just throw that in, because I've done some due diligence and I'm not just here --

THE COURT: Oh, I'm not denying -- denying that you --

MR. KENNEDY: Shoot from --

THE COURT: -- you -- I just wanna know -- make it clear who you're representing.

MR. KENNEDY: I represent the Association that owns stock and the three individuals as we pointed out. You know, enough's enough, we could've stacked the pleading with a thousand objectors, but you know, the point is the same; is that it shocks the conscience of the folks.

And, you know, we want the -- the attorneys to get paid well and they should because it promotes desire to do this again. And we understand the difficulties. I, of all people, understand how difficult it is to fight U.S. West and Qwest. I've been doing it for 23 years. I've 65, 75 cases experience.

But I don't understand why you have to have an incentive of 2.3 times every hour that's not even questioned. You've got enough incentive at 1.5 times that. And then there's plenty of money for the people who deserve this which is really what they went for. This is what this lawsuit was all about is to help people out and get 'em some money in their pocket.

And then the last thing that I did when I went through all this paperwork, is I've noticed what caught me by surprise is that when you look at the reports by

the partners and the Associates, for instance, let's look at Lerach's report, Lerach's law firm. And I've listed all the partners. There's 5,055 hours by the partners, there's 2,800 hours by associates. The ratio is 65 to 70 percent partner work. These partners are charging 600, $650 an hour. That represents a supervisory role. They didn't spend all that time doing supervisory work. They must've done a lot of work that could've been delegated to associates.

And then the other thing that caught me by surprise and I'm really kind of wondering why they couldn't bother to even name these people. There's three paralegals in the Lerach's law firm statement and it just says, Paralegal 1, Paralegal 2, Paralegal 3. Collectively, they supposedly spent 3,000 hours working on this case. The law firm doesn't even bother to give 'em the courtesy of a name. Are they really people? Did they really do the work? Why not disclose their names?

In short, addressing just the attorney's fees issue, I think there's plenty of wealth here, plenty of reward if you give them 1.538 I calculated, 1.538, it comes out to almost $10 million. That's 20 percent of the $50 million. And then there's the matter of expenses.

And I think that we really have to hold off on

doing that. We need to bifurcate this issue about the expenses. There's really no detailed documentation of expenses. You know, I did some adding up of the meals and hotels and transportation, $168,754 for meals, transportation, hotels. Where did they guys eat? At Ruth Chris' all the time? Where they did they stay? What are they charging for all this? And there's no documentation? Are we paying for bar tabs after the meal? We don't know. I don't think very many courts would allow someone to waltz in and say, Hey, I wanna be reimbursed $168,000 without some detailed documentation.

I'm sure if we went into it, we'd find a whole lot of mistakes and things, that, oh, we didn't really mean to charge that, that was just an error. But be as it may, I think it -- it's not worth nitpicking at this point 'cause we don't see the detail. I mean all of it should be held at least in abeyance until there's some more justification.

And another example is the photocopies. $105,000 for photocopies. I was thinking, I don't know how many powerful copy machines can you buy for 105,000? Does the class own those machines now? But there's not any detail other than they're charging 70,000 for in-house copies at the rate of 25 cents each. You would think you would give a discount to your client when you

start to run up that many thousands of pages of documents. Not this flat 25 cents per page.

Then there's the matter of facsimiles and telephones. $20,900 for facsimiles and telephone calls. How much of that is really facsimile? And what do we mean facsimile? Do people really pay for a page of fax to go across a telephone line? Isn't that kind of duplication of the photocopying at 25 cents a page? There's just really not a lot of examples of -- I mean information there.

And where it really got perplexed was the Lerach's law firm saying they wanna be reimbursed for all this in-house people that we have on our payroll, like forensic accountants, investigators, and then mis, m-i-s, I don't know what that is. What are we talking about? $4,230. Economic damage analysis, 10,140. Were these people paid on a salary basis and then the company charges them in addition for the work done? Shouldn't the class be paid what it costs Lerach not some additional profit? Or are they figuring that in as well?

The same issue spills over with messenger/overnight delivery and support staff. For instance, Milberg's law firm doesn't give any explanation but includes $28,000 for support staff? What is that? Should the settlement fund pay for 28,000 of settlement

monies for support staff with no further explanation? No. Not yet.

But you can see in general the $1.3 million is a lot of expenses and sure it costs a lot. They had to have experts and we understand that. But they shouldn't just throw in a meal tab, a hotel, transportation tab of 170,000 almost and say, Here, class, you pay it. Again, we're not here to belittle the results. We think it's great and we understand the difficulties here and we're proud of 'em and we're happy. We really we thank you.

But I think in this day and in this community, 1.5 times your hourly rate, getting you up to $10 million for all this is great. It wasn't a home run. It wasn't a grand slam after a trial. It's a great result. And you're really gonna be rewarded and sufficiently compensated at that rate and there's gonna be a lot more money for the little people, the retirees, the very ones who got screwed and were being represented by you.

So I hope that you'll consider this, Judge, and I've impressed upon you to reduce the award not at 30 percent but get it more in line with what really should happen when we start getting up to these 50-, $70 million dollar settlements. Let's keep in cap it at 20 percent, Your Honor. Thank you.

THE COURT: Thank you, Mr. Kennedy. Be happy

to hear response for counsel from the class. And, again, introduce yourself and your firm.

MR. DOWD: Rather than just --

THE COURT: Again, introduce yourself.

MR. DOWD: Oh, Michael Dowd again, Your Honor. I'm sorry. Rather than just starting with Mr. Kennedy and I'll get to him, I think that it's important to first just walk through the issues that were on the table today and discuss those with the Court. And I think the first issue and the most important one is with regard to the settlement itself and whether that settlement should be approved.

I think Mr. Kennedy just said he thanked us. I didn't really feel that thanked when he was finished. But that said, it seemed to me that he seems to not have an objection to the settlement itself. At least that's what I took away from what he said. I think, Your Honor, that this settlement -- the standards that the Court is asked to address are, Is it fair, reasonable, and adequate? And I'm prepared to address those standards if the Court would like me to or just answer questions whichever the Court would prefer. But I will walk through the factors.

Basically, the factors for judging the fairness, the reasonableness, and the adequacy of the

settlement come from two cases. We've cited the Bonfils case in Colorado, and then the Jones v. Nuclear Pharmacy case which is the Tenth Circuit standard. And essentially those standards are very similar. I mean the first question this Court is asked to address is was the settlement fairly and honestly negotiated, and I submit to the Court that there's no question that this settlement was fairly and honestly negotiated by the parties.

You know, this is not a case that was settled earlier. This case was litigated vigorously for five years by the parties to this case. I know that the people sitting at that table thought that they had no liability and they fought us. They fought us for five years that these firms work on behalf of this class.

And then, Your Honor, on the eve of trial, the case settled. But it settled after two mediation sessions with a retired federal judge. And those two mediation sessions were held in March and April and when we walked away from them, we felt that there was no question in our mind that this case was going to trial. I had no doubt. The parties were just too far apart and I thought that the case was clearly going to trial, and we got ready to go to trial and we did all that work.

The long and the short of it is in judging this

fact, Your Honor, there can be no question that the settlement was fairly and honestly negotiated. There is no collusion, there's no early settlement, there's no settling with some class members to the detriment of others. This was a fair and honest settlement and so I think we clearly meet that factor in terms of judging the settlement.

The second issue the Court is asked to address is the -- whether there were serious questions of law and fact that placed the outcome of the litigation in doubt. And, Your Honor, I think that there's no question that there was serious questions of law and fact. I know this court had the case for a number of years and is very familiar with the issues. I think that this was a case that in some ways was very straightforward. I mean it was a breach of contract claim and in other ways it was unbelievably convoluted because of the lack of controlling authority and then just the unbelievable factual dispute that underlay the entire thing.

But just to sum it up in a nutshell, I think there were two main issues. The first was as to liability. We know that U.S. West Board declared a dividend on June 2nd, 2000. The question was what record date did they set for that dividend. I think the first issue was, What if they set a July 10th, record date?

And had the evidence established a July 10th record date had been set, the Defendants would have argued that there was no way in the world that this dividend was owed to anyone. And their theory was fairly straightforward. Though there was no controlling case law, they would have said, U.S. West ceased to exist on June 30th, 2000. There were no shareholders of U.S. West on July 10. And therefore there was no dividend that was owed. And that would have been the major legal issue facing us with a July 10th record date.

And there was no controlling authority. There were great cases for us that said, When you declare a dividend, it's an obligation. There were no cases that said, And then when you have a merger, after that happens, you still owe the money when the shareholders don't' exist any more. And so I think there would have been a serious question as to liability if the July 10th record date was found.

If the record date that was set by the Board was June 30th, we felt that legally we were in a much stronger position and had a much better chance of success. The problem with June 30th is that we ran into a real question, a real factual dispute about what date was set. We had and we argued this to the Qwest attorneys, to the mediator when we talked to him, we were

gonna say, Hey, the physical evidence doesn't lie. The documentation -- the documentary evidence doesn't lie. It said, June 30th when they issued their press release, we got a certified resolution that says, June 30th, we got an associate General Counsel of the company that said, June 30th. Now, the problem we were gonna face is that the Defendants were gonna parade in 11 officers and directors of this company who are at the June 2nd Board meeting, and they were all gonna testify that it was either July 10th or that it was done in the ordinary course which meant July 10th and that there was only one resolution in the Board book that day, and it said July 10th. So that was going to be a very difficult factual issue. And frankly, some of the witnesses that the Defendants were prepared to parade out, were people that are very well respected in this community and they had a former United States Senator, they had other people who were not beholden to U.S. West or Qwest on their Board. And that was going to make that difficult.

If we got passed that, Your Honor, there was still the issue of damages. I mean we always came in with our straightforward analysis that, Hey, the damages are the unpaid dividend, you owe us 272- or $273 million. The Defendants didn't take that sitting down. They went out, they got an economist, he was prepared to come in

and say, At best it was $124 million that's owed because you have to do all these other analysis from the economics of it and then it could be even less than that depending on other factors. So you had real questions as to damages as well. And I think therefore, Your Honor, there could be no question in this case that the outcome of this litigation was in doubt. And I -- I hope and believe that this Court probably shares that view as well.

The next factor that the Court's asked to consider in approving the settlement itself is whether the value of the immediate recovery outweighs the mere possibility of some future relief after protracted litigation. You know, I look at this, Your Honor, and what it really is what's better; a bird in a hand or two in the bush? I mean that's the analysis. And I think there was no question that the 50 million is a very good settlement in this case. It was $50 million guaranteed in hand, no question about it versus the risk at trial that we've just walked through; that this could be a complete shutout. And I think that was a serious risk in this case, that we could've lost.

And had we won, because of the questions about the legal authority and whether there was controlling legal authority on some of these issues applied to this

fact pattern, we would've looked at another two or three years of appellate litigation where even a verdict in Plaintiffs' favor could have been reversed and in any event, the money wouldn't have been available for years down the road. So I think that factor, again, cuts in favor of the settlement.

The fourth factor that the Court is asked to consider is the judgment of the parties that the settlement is fair and reasonable. I think, Your Honor, that, you know, that's a factor that shouldn't be taken lightly in this case. I mean, you had very well qualified defense counsel that, you know, believed the settlement was fair to their side; and I think you have some of the, you know, finest class action lawyers in the country on the other side that thought that this was a fair settlement for their side as well. And I think, you know, everybody involved in this case has experience. We've won 'em and we've lost 'em. And I think that, you know, we're prepared to make that analysis and that judgment should be entitled to some weight.

The other considerations that the Bonfils Court said should be taken into account by the Court are the stage of the proceedings in the case. And that's an important one for a number of issues. But it's very important here and it's very relevant here. This isn't

an early settlement. This isn't a case where, you know, somebody decided to settle the case for whatever reason within a few months of filing. It went on for five years. I mean we took 23 fact witness depositions. We defended three others. There were 11 expert depositions. We went through all the documents. We went through three rounds of essentially summary judgment briefing in this case. We knew this case. The stage of the proceedings clearly support that this is a good settlement. You know, people can look at this as long as they want, they're not gonna know as much about this case as Ms. Andracchio and Mr. Westerman and Mr. Lurie and Mr. Shuman and myself knew the day we decided to settle. It's that simple.

I think the other thing to consider is the reaction of the class. When you had 760,000 notices of settlement that went out, plus, and of those 760,000 plus notices of settlement, you got 11 people objecting basically. And I think that that's something the Court should consider. It's a minuscule amount of objections to this settlement. And I think that for that reason, Your Honor, there's no question that this settlement is a good one.

As to the specific objections to the settlement, I think that Mr. Kennedy raised questions

about the source of the funds for the settlement, I think we've cleared that up. I apologized. I had a communication with Mr. Theis and asked him where the money was coming from, and he said it was all coming from U.S. West insurers. He meant as opposed to Qwest insurers on that 25 million. The other 25 million is coming from Qwest which we knew 'cause we got the checks. So I had no doubt, I just had some question as to whether something had happened after that time.

So I think there's no question that, you know, the money comes half from Qwest half from U.S. West old B&O liability insurance and they provided an affidavit to that effect from one of Qwest's officers. So there's no question about that. And I think, Your Honor, one of the concerns that was raised, is hey you're not getting money from the individual Defendants. Well, Your Honor, I understand that and I understand there's a lot of anger at Qwest in this community particularly by U.S. West retirees who traded their shares for Qwest shares that over the next year or two went drastically down in value. We're sympathetic to that but it's not what this case was about. This case was about the dividend that was declared by U.S. West and not paid. And so though there might be animosity, though there might be anger, though there might be hostility, it doesn't play into the facts

of this case, and I think you have to divorce those two things.

And so the real issue is what was the case about and it was a breach of contract case. I mean I know that the Defendants used to say when we'd try to, you know, say that there was a breach of fiduciary duty by the director Defendants, they'd say, Hey, you gotta be kidding me. The director Defendants would have got $600,000 from the dividend 'cause they owned that many shares and they would have put it in their pockets. And so I think that, Your Honor, it's not an issue in this case as it is in securities cases where you have insider trading and things like that.

The bottom line is if Qwest had paid the dividend on August 1st, it would have come out of Qwest pockets. And that's where it's coming from. So I think that that is fair and it's not a reason to -- to deny this settlement.

As to the other issues, Your Honor, I mean essentially they all boil down to problems with the notice that different people had. And I think, Your Honor, when you -- when you look at the notice that this Court approved back on June 24th, it clearly complies with due process. It complies with the case law. I mean it describes the litigation. It describes the

settlement. It describes the plan of allocation. It describes what Plaintiffs' Counsel will seek in fees and expenses. And it contains a list of your rights and options that you have as a shareholder. That's what's required by the law. That's what was in the notice. I mean there can be no serious question about the validity of that notice that this Court already approved.

As to one of the other issues, I think it was Mr. Fitzpatrick filed an objection where he complains about the lack of a second opt-out. Now, Your Honor, we sort of crossed that bridge 'cause we sent out the notice of settlement, there wasn't a second opt-out, and there was a simple reason that this Court didn't ask for that. It's because the Colorado rule unlike the federal rule that was amended to allow a discretionary second opt-out, the Colorado rule wasn't amended, it does have a second opt-out. You were in for a penny, you were in for a pound. You know, you got the notice of pendency of the class action, you made a decision to either opt-out or stay in. People opted out. They got that notice.

And, you know, there are -- there are practical reasons why that should be respected. I mean first of all, you have due process notice, people got it, they made a decision and they live with that decision, that's what it's about.

Second, you know, the Defendants pay based on who's opted out. I mean that was very important to them. I mean they wanted to know if, you know, individuals or institutions were gonna file their own lawsuits 'cause that would have made a difference to these people and I think they counted on the fact that the opt-out period was over, we were ready for the trial, and so I think that it's perfectly appropriate for there to not be a second opt-out.

In conclusion, Your Honor, I think as to just the fairness, the reasonableness, and the adequacy of the settlement, I don't think there can be any question about that in this case. And if the Court is prepared to approve the settlement or has -- you know, I'll move on, if the Court has questions I'd be happy to answer them.

THE COURT: I don't have any questions at this point.

MR. DOWD: Okay. Thank you, Your Honor. The second issue that the Court is asked to address is the plan of allocation itself. And, Your Honor, the plan of allocation in this case is pretty simple. You get a pro rata distribution based on the number of shares you held. And I know that we've gotten some objections from I believe two objectors, there was a Mr. Foster who was a late filed objector who filed a reply again yesterday and

I think that, you know, when you walk through his sort of objection and I think it can sort of be an objection to the plan of allocation. I mean he talks about conflict of interest. I struggle with this, Your Honor. 'Cause somebody says, Gee, you're breaching your ethical obligations, you have a conflict of interest. And I look a what we did and I say, Wait a minute. We looked at this thing, we said, Everybody were to get 53 cents from the dividend, everybody will get their pro rata share and they'll all get exactly what they'll get based on the number of shares outstanding. If you had ten shares you'll get, you know, X. If you have 100 shares, you'll get ten times that amount.

I mean you couldn't have done something fairer. There is no question, there's no pitting small shareholders against large shareholders. It just doesn't exist. I mean frankly, I think the accusation is just completely unfounded and I think in this case, I mean I can't even imagine that type of objection. So I think that as to this, you know, there are problems between larger and small. It doesn't exist.

As to the other issues that, you know, Mr. Foster raises and I think one other objector, they say, Well, why can't they just send me a check, you know? Why do I have to fill out a form that tells me to list

how many shares I have. They have all that information. Well, the simple fact of the matter, Your Honor, is they don't have all this information. I mean the Court was involved in conference calls with the parties when we were trying to get all that information when we were doing the notice of pendency. It's not true that Qwest or its transfer agent have all that information. It's true that they have better information in this case than in most. I mean you probably had, you know, 500,000 people or some percentage of the class where they did have information. Information that was five years old, it doesn't account for people's addresses changing, it doesn't account for people passing away. It doesn't account for any of that stuff.

And then you still have another, you know, 35, 40 percent of the class that held through brokers. And you have to go through the brokers to get that information. There's no other way to do it. So I think, you know, for them to say, Hey, you have the information, just send me a check, practically it just doesn't work. And that's why in every class action case, you submit a proof of claim form. I mean it just has to be done.

It also ties into the fact that, you know, when you look at these -- at the cases and, you know, and the analysis that's done, you know, the reality is that, you

know, it has to be done that day. I mean the Defendants get, you know, releases from the people, I understand that they'd be released anyway if they hadn't opted out but it's certainly something that they bargained for and I think, Your Honor, there's just -- there are reasons why it's done that way because you need people to decide, do I want to share in the recovery.

You know, I found it remarkable that Mr. Foster writes yesterday that I had said something I think he said nonsensical or idiotic or a word like that 'cause I said not every class member's gonna wanna submit a claim form. Not everybody wants to share in the recovery. And he says, Of course, everybody wants to share in the recovery. And the reality is if you look at the objections, there's at least one objector and maybe two who say, I don't want a share in the recovery, I'm not gonna submit a claim. So he says, of course everybody does; the reality is, they don't. And that's why you ask people to submit a proof of claim form. Nothing unusual about it, it's done in every case and in this case, you had to do it that way as a practical matter.

So I think, Your Honor, in the realities of the situation are that the settlement is fair; the plan of allocation despite any, you know, sort of arguments to the contrary, the plan of allocation is also fair and

reasonable in this case.

I guess, Your Honor, that brings us to the, you know, the fee and expense application and, you know, which is I take it the bulk of Mr. Kennedy's objection, there are other people who objected to it as well. And we understand it, Your Honor. I mean, you know, we go through this in, you know, a lot of cases, we represent people in class action cases all the time. And, you know, you hear things like, Well, gee the attorneys got a windfall, you know. And nobody really looks at, you know, what the result was and that there are other cases out there where you don't get it.

And the reason is, Your Honor, because this practice, class action law, filing cases like this is about risk and reward. You know, you're not here getting paid on the 1st and the 15th of every month like defense counsel are for five years. I mean you're out there risking your -- your resources, your practice and the reward for that risk for laying out $6 and a half million dollars and over another million dollars in expenses over a five year period is that when the case comes to a conclusion, you apply or a percentage of the fee award and you should be rewarded for that risk and the case law says it. And I think that's very fair, Your Honor.

But to sort of go back to the factors that the

Court considers, I mean that's sort of an overview and I understand that people get mad and look at it and say, Plaintiffs' attorneys are getting too much but the reality is, you encourage people to do these lawsuits so that people do get a return in a class action and the reward for that is to be on a contingency fee basis and to get a percentage of the fund.

In general terms, Your Honor, you know, you look at the fee and expense application, we asked for a percentage of the common fund, it's been approved by the Supreme Court, it's been followed by Colorado State Courts, it's been followed by the Federal Courts in the Tenth Circuit and across the country. I mean the common fund percentage of the fund recovery for Plaintiffs' counsel is what the law holds, it's what's justified and it's what's right.

If you look at the factors that this Court is asked to consider to determine what percentage to apply, they're really in two different places but they're very similar. You have the Colorado Rule of Professional Conduct 1.5 that lays out factors that the Court should consider and that mirrors to a large extent, I mean they're the same issues the Johnson factors that have been used by, you know, in courts throughout the country.

And I think, Your Honor, before I get to the

response to the objections, I'd like to just walk through those factors 'cause I think it's better to go sort of in order. The first three factors that are laid out in those -- in the rule and the Johnson case are the time and labor involved, the novelty and difficulty of the questions presented, and the skill and experience of counsel.

And, Your Honor, you know, I came in to this case later on, I started helping at the class certification stage and then I was the one that was gonna try the case as Your Honor knows. I argued the motion in limine in this court, I was here for preliminary approval of the settlement. But Ms. Andracchio and my partner worked on the case for five years from the time it was initiated as did Mr. Shuman as did Mr. Westerman as did Mr. Lurie.

And I'd ask with the Court's indulgence, I'd like Ms. Andracchio to just address those first three factors 'cause I think she's in the best position to explain exactly what we did for the last five years. So I'll let her do that and then I'll come back.

THE COURT: That's fine, sir.

MR. DOWD: Thank you, Your Honor.

MS. ANDRACCHIO: Good morning, Your Honor.

THE COURT: Good morning.

MS. ANDRACCHIO: Laura Andracchio. All the work that we've done, Your Honor, is set forth in great detail in our papers, so I'm going to try to be relatively brief. It took 30 pages to summarize what we did so I'll try not to go on for that long but to summarize, the case was very aggressively and actively litigated for five years. Plaintiffs' Counsel, all three firms did an inordinate amount of case -- of work on this case. We spent almost 16,000 hours of our professional time on the case. And all that work was necessary because both sides believed adamantly in their positions.

We -- Defendants believed that we would never be able to prove that a June 30 record date had been declared. They also believed that if we couldn't prove that, the case was over. And we, on the other hand, believed that we could prove based on minimal but powerful evidence -- what we thought was powerful evidence -- that a June 30 record date had been declared but we also thought and this was pivotal that even if a July 10 record date had been declared which was Defendants' defense all along that we could still win based on substantial legal authority.

Now, Mr. Dowd went into more detail about all that but these were the circumstances that drove both sides for five years and drove us all the way to the eve

of trial. Now, some objectors have come forward and they've looked at our Complaint and they've looked at the amount of the settlement, they've looked at the amount of the dividend and they've looked at the fact that the settlement was reached on the eve of trial and based on those few facts, they've cried foul. And we'd respectfully submit that those objections are unfair and very uninformed. And part of that may be because a lot of the papers in this case were filed under seal so that anyone who wanted to really look at what the evidence was for us going into trial might not have really been able to assess that or assess the competing legal positions which we both very aggressively argued.

That said, I'd like to briefly summarize our efforts and the risks that the Plaintiffs faced going into trial for the benefit of some of those here who maybe are only recently assessing the case. Our work fell generally into several categories. There was fact discovery, there were dispositive motions, there was the class certification phase, there was mediation, there was expert discovery, and then there was trial preparation.

We took -- in fact discovery we obtained a substantial amount of documents from the Defendants and third parties, many of which we had to fight for. People don't realize that you go out and subpoena a third party

or we asked Defendants for documents, oftentimes they don't just hand them over, you have to meet and confer, maybe file motions and in one case we had to do this in this case. So we fought for a lot of those documents.

Among the documents that we did receive was a U.S. West -- we received it from Defendants -- was a U.S. West certified resolution signed by a corporate secretary of U.S. West that said -- it certified that the Board had declared a June 30 record date at its June 2, 2000, Board meeting and that's what we had alleged. We were happy about that document. But then we went out and we took the depositions of 23 fact witnesses in varying locations across the country and that was a lot of work and a lot of expense, Your Honor, just preparing for the depositions, taking them, traveling. We took Saul Trujillo in California just to give an overview. We took nine other former U.S. West directors in locations including Florida, Ohio, Minnesota, Idaho, Denver, Northern California, Arizona. We took Qwest's former CEO in New York. We took U.S. West transfer agent in Massachusetts. We took several former U.S. West employees in Denver and Georgia and those included U.S. West's former general counsel and its former CFO.

Of the 23 fact witnesses we deposed, 11 of them attended the June 2000 U.S. West Board meeting where the

dividend issue was declared. And all 11 denied that a June 30 record date had been declared and that was contrary to our allegations and that was contrary to the certified resolution that we -- that Defendants produced in discovery.

Before and after the fact discovery -- and this goes into the dispositive motion part of the case -- before and after fact discovery, Defendants mounted strong, aggressive defenses in every critical procedural stage of this case. And we fought equally aggressively in response. They filed a motion to dismiss. They filed two motions for summary judgment. They filed a Rule 56(h) motion and they aggressively opposed class certification as Your Honor may recall.

After fact discovery was completed, for example, Defendants renewed an earlier motion for summary judgment and we brought our own motion for summary judgment. The Defendants argued that since everyone who attended the U.S. West Board meeting denied that a June 30 record date had been declared that our claims had to be dismissed. And we argued on the other hand that the certified resolution and the testimony of one witness indicated that a June 30 record date had been declared and that it raised a triable issue of fact.

We also argued that even if the record date was

July 10, that we were -- Defendants were still liable as a matter of law on both the contract and the breach of fiduciary duty claims. The Court denied both of the motions for summary judgment and that left this very pivotal legal issue alive for trial whether or not there was liability on the July 10 record date.

After both sides summary judgment motions were denied, the final procedural hurdle, Your Honor, was class certification. And as I mentioned before, the Defendants mounted an unusually aggressive defense to class certification. They went to the extreme of hiring two experts, one of whom they paid almost a half a million dollars to give opinions that the class should not be certified. And those experts raised complex financial, economic securities issues and Plaintiffs' Counsel consulted with five experts just to be able to understand those opinions and to depose those experts effectively and then to be able to cross-examine them at the class certification effectively.

I mean we didn't just start deposing these people, we had to talk to people who knew as much or more as Defendants' experts did in order to be able to do all of that. And this also goes sort of a lot unspoken but also in the context of class certification, both the named the Plaintiffs and the pension funds money manager

produced a substantial number of documents which we also had to review before they were produced and they sat for three depositions that were taken by Defense Counsel. And that's never a pleasant experience for anyone that's representing a class. But after substantial briefing on the class certification, as Your Honor may recall, there was a lot of briefing on that with appendices and everything, Your Honor, held a one and a half day hearing that was akin to a mini-trial. So there was an awful lot of preparation that went into that as well, you know, on top of everything we had already done.

We -- the Plaintiffs presented the testimony of three experts, the Defendants presented the testimony of two experts. We had opening and closing arguments on both sides and after the class certification, Plaintiffs' Counsel had to brief additional issues that were raised at the hearing. So just in short, obtaining class certification in this -- in this particular case required an unusual amount of effort and expense on our part. So that said, the Court did certify the class in January of this year and after the class notice was entered, our firm worked very closely with Jilardi, the claims administrator, so that was a lot of time that we put in, too, just to make sure that the class notice procedures were effectively carried out under this Court's order.

And the class notice was also very expensive. It was almost $400,000 just to give notice to the class before there was any settlement notice.

After -- after that occurred, we decided that maybe it would be beneficial to mediate the case after the class was certified. So the parties selected a former United States District Court Judge and we mediated for two full days before him. And after two full days of mediation when we put forth our evidence, we submitted mediation briefs with all of the law, we submitted appendices with the exhibits that would be considered at trial. After two full mediation sessions, we were still very far apart. We were unable to resolve the disputes so we, you know, we went forward and we continued to prepare for trial. And we also continued to negotiate with the oversight of this particular mediator and in fact, his oversight and judgment was very important in achieving this settlement.

And while we were -- part of our trial preparation efforts included another extensive round of expert discovery and this -- we did the class cert expert discovery, then we had to do expert discovery for trial. And a total of seven experts were designated by both sides. That, again, required a lot of work. Every expert submitted lengthy, complex reports. I mean some

of them were 30, 40 pages and these were on issues like contract and fiduciary duty issues, complex economic issues, finance issues, accounting issues. So, again, in the context of preparing for trial and experts who would testify, we worked extensively with our own testifying and consulting experts among our consulting experts were in-house forensic accountants who helped us understand some of the accounting issues involved in declaring a dividend.

And in short -- oh, we also deposed before trial occurred, we deposed all three of Defendants experts, they deposed all of ours. Again, lots of preparation for those depositions and to prepare our own experts to testify. So while we were also doing all that, we were doing other things to prepare for trial. We -- that included -- and this was one of the largest expenses, actually, it included moving an entire team of attorneys, paralegals, IT personnel who do the computers and computer graphics and administrative staff to Denver from California and we did that more than two weeks before the trial commenced. And while we were doing all of that and everybody was moving here and we were making our final trial preparations, we also filed several motions in limine, we argued them before this Court and we also filed a very lengthy trial memorandum that put

everything together very comprehensively and the TMO which we filed jointly with the Defendants.

By the time -- to summarize, by the time that this case settled, Plaintiffs were fully prepared to put on our case in chief. We had prepared cross-examinations and exhibits for almost every case in chief witness. We prepared an opening statement. We prepared demonstrative exhibits. I mean we were ready to go when this case settled.

So in summary, Your Honor, this is not like some cases that settle after there's little or no discovery or before the class is certified or before anyone even thinks about trying the case. And I would go through the risks, Your Honor, if you'd like me to, but I think Mr. Dowd handled the risks that we faced going to trial but they were -- they were very high. I mean we really honestly felt assessing this case in full that there was a very large risk that we would walk away after a trial with nothing.

Is Your Honor fully --

THE COURT: No, I don't need -- you don't need to go through that.

MS. ANDRACCHIO: Okay. In summary, Your Honor, we worked very, very hard on this case, almost 16,000 hours collectively among all the firms. It presented

legal and factual challenges. It required Plaintiffs and their Counsel to be very diligent and very devoted to the case. And in some ways I think it's remarkable that the case actually survived to the point that the Defendants considered it a big enough risk to pay the class what they're paying it.

And I -- I -- we do firmly believe that this settlement's a very good result and I thank you.

THE COURT: Thank you.

MS. ANDRACCHIO: Thank you for your time.

MR. DOWD: Your Honor, I apologize for taking up so much time but I just wanted to --

THE COURT: It's an important issue and I will give you time and if Mr. Kennedy wants to say more, he'll have an opportunity.

MR. DOWD: I appreciate it, Your Honor. I appreciate it. You know, Ms. Andracchio just addressed sort of the first three factors that the Court's asked to consider in determining the reasonableness of the percentage requested. There are other factors. I mean one of the other factors is preclusion of other employment. I think that's, you know, clearly applicable in this case. I mean these firms worked over 15,000 hours on this case. That's 15,000 hours that could have been worked on other cases over the last five years

making other cases better, doing other cases, and that's a fact that it clearly cuts in our favor in this case.

The next factor that the Court is asked to consider is the customary fee or level of award in the case. Your Honor, you know, we've cited a host of cases in our briefs from both Colorado state Courts and Federal Courts where Courts have awarded 30 to 35 percent in complex class action litigation and I think it's very justified here. I mean if it's justified in complex class actions generally and we have all these cases that say it is from Colorado, I think it's clear that it's justified in this case that settled on the eve of trial.

And I note, Your Honor, that in looking back over the case law and writing the briefs, one of the cases I noticed was the Storage Technology case. And in that case, the Court -- the District Court in Colorado awarded a 30 percent fee on a $55 million settlement and noted that it was one of the largest settlements in Colorado history that was about ten years ago. But I have to think that this 50 million is also one of the larger settlements or awards in Colorado history and I think that also justifies a 30 percent fee.

It's simply not extraordinary. I mean you look at, you know, some of the things that Mr. Kennedy just said, he says, Oh, look at that Denny v. Jenkins and

Gilcrest. I think if you look at that case, Your Honor, it doesn't look to me like they took depositions before they settled the case. It looks like they did confirmatory discovery after the settlement.

And so, you know, I think when that case starts talking about fees of 30 percent not being justified you have to look at the facts of the case, it's very different. I mean in this case all the work was done. We were ready to go. When we settled this case, we were working on the opening statement and getting ready for the witnesses. I mean we were ready to try this case and we were two weeks away from finishing the trial as this Court well knows.

So I think that's a different case and if you look at these cases, you have a case like Xcel, Your Honor, that we cited in our papers, the Court awarded 25 percent of an 80 million fee and there had been no depositions taken in that case. All there was was, you know, an early settlement for whatever reason. And I'm not criticizing that, but there are 25 percent fee before you even got close to taking the depositions in the case.

Also, Your Honor, this isn't a case like some where there's a government investigation, where there's a roadmap laid out for Plaintiffs' Counsel where things are done, where people have provided prior testimony or

statements. I mean this case was worked from square one from the time that Ms. Brody filed this lawsuit and sought an injunction trying to prevent U.S. West from not paying the dividend, asked to have the money put aside, you know, basically frozen with a TRO. I mean from that time, this case was litigated purely by Plaintiffs' Counsel by themselves.

And I think when Mr. Kennedy cites the cases in the Denny case that say, Well, you know, you have different where you get over a certain dollar amount, you know, there's cases that go both ways on all that stuff, Your Honor. There's a Lupran case that we cited in our papers somewhere that says, Hey, you know, people always say that, that in mega-fund cases, you know, $100 million in that range, people don't get a 30 percent fee award or a 25 percent fee award. And it says, you know, it's just not true. If you do an empirical analysis like they did in some of the Ninth Circuit cases, it's just not true in the mega-fund cases.

So there's case law that goes both ways. But the reality is you have to judge this case. And in this case, the work was done for five years. If any case ever deserved a 30 percent fee award, it's this case and I think that's very true, Your Honor. So that factor again cuts in our favor.

The other big issue and I've sort of addressed it a little bit is was it a fixed fee case or was it a contingency case. That's a huge factor supporting a 30 percent fee request in this case, you know, I've said it a number of times. The case was litigated for five years. Nobody paid us that entire time. Nobody fronted our expenses, we paid all that money. We were the ones at risk for the class all by ourselves. If this case had been a shutout which it very well might've, you know, I think that we would've been out all that time hand all that money and no one would've been calling us to say, Gee, we're sorry that you spent that money on photocopies. We're sorry you spent, you know, 250-, $300,000 on experts. We're sorry you spent $400,000 sending out the notice to the class members. Nobody would've done any of that for us.

But now after the fact when we laid all that money out, that's when people have questions, and I think that the reality of the situation is the fact that this is a contingent fee case where people worked without compensation for five years is a huge factor that supports this. There was clearly no guarantee of success and it's clear that the Plaintiffs' Counsel in this case stuck to their guns to get a better settlement. I mean if we wanted to dump this case and just get a settlement

and get our money back, we could've done it back in March or April with whatever the Defendants were offering at that time and it wasn't enough. 'Cause we knew how important this case was. You know, I talked to people about this case, too.

I mean I know that the U.S. West retirees are here today, you know, everybody got the notice of pendency in this case, you know? No one called me to ask how they could help back then. And I was looking for witnesses in April, Your Honor, when that notice went out. I mean we went through documents that Qwest produced to find every letter that was written to Qwest when the dividend was not paid and I called by phone every single one of those people asking them if they would come testify in this courthouse. You know, some of these people had passed away, others were unwilling to get involved, and I had four people who stepped up. They were between the ages of 78 and 81. They lived in New Jersey, North Carolina, Eastern Colorado, and San Francisco. And all four of those men even though they were between 78 and 81 said, Yeah, I'll fly there 'cause I don't like what happened in this case. I don't like that they didn't pay me the dividend and I depended on it.

No one else stepped forward. No one called me.

I never heard from Mr. Kennedy after the notice of pendency went out telling me I got witnesses that you can use and I was looking for 'em, Your Honor. So I think that the reality is those four people that knew how hard we worked that worked with us that were willing to come testify when I talked to them about this settlement, they were ecstatic about it. And I think they understood what we went through and how much work we did. And I think that's another factor. They understood it was a contingency, that we were laying out all the money, they worked with us, they were willing to come forward, and they had supported the settlement to me at least in my discussions with them.

The next issue, Your Honor, is the undesirability of the case. And, Your Honor, this case was filed by Ms. Brody, the Teamsters local pension fund joined in. It was a case that no one else filed, you know? There weren't a lot of people, you've got, you know, objectors here now. None of them filed the case. None of them said, Gee, I wanna be involved in it. It just wasn't a case that plaintiffs' firms were knocking down the door to get to. It's a weird case, Your Honor. I mean it truly is. I mean whether a dividend has to be paid after a merger.

I'd note for the Court and it has nothing to do

with this settlement, but it's interesting just to show the impact a case like this can have in the future, you know, Unical declared a dividend recently and when they declared the dividend, they knew that there was a merger pending and when they declared that dividend, they specifically noted in the dividend declaration and the press release that went out that if the merger happened, the dividend would not be paid. So it's interesting. I think the Defendants look at the law, too, corporations look at the law, too. They knew what happened here. And they didn't wanna be sued for this going forward. But back then in the year 2000, I don't think anybody was even thinking about cases like this. And so I think it wasn't a case that people were chomping at the bit to do and that's another factor that justifies the request.

The next issue, Your Honor, is the amount involved or the result of the case. I think there could be no question that in this case, there was a substantial benefit in this $50 million cash settlement in the face of great odds and great risks as we've outlined for the Court.

You know, the other considerations the Court can take into account in determining the reasonableness of the request or the reaction of the class. Again, you have 11 people that have concerns; you have 760,000 that

got the notice and who said nothing. So I think that's an issue.

I think there could be no question that when you go through Rule 1.5, and the Johnson factors every single one of those factors cuts directly in our favor in this case.

The last check, Your Honor, and I think the one that causes all the problems, the angst for people is what they call the lodestar cross-check. And I just wanna be clear with the Court and with the objectors and everyone else. I mean we're not asking for a lodestar based fee, and I think that might be part of the problem. I mean this isn't a case where somebody's doing a civil rights case and you have statutory fee shifting to the Defendants and then you come in and you lay out all the time you did and they can pick through it and figure out whether you lost some claims and won others and whether those hours should be cut out.

This is a percentage of the fund case. The only purpose in a multiplier or the lodestar cross-check is just to see if there's anything when you do that analysis that would lead the Court to conclude that the request is just excessive. That's all it's about. It's like a check and a balance to see if it's excessive. If you look at the time that was submitted and it's clear

under the case law, you look at the Rite Aid case from the Third Circuit, they say, Hey, when you're awarding a percentage of the fee or a percentage of the fund recovery, you can rely on time summaries or a summary of just the hours because you're not doing that other type of case, the lodestar multiplier case. So summaries are just fine.

And when you add up that time and multiply it out by the hourly rates, it comes out to about six and a half million dollars. That results in a multiplier based on this fee request of 2.3. That's well within the range, Your Honor. I mean the cases that we cited to this Court say that multiplies of two to three are common. They're given in many, many cases. They're the overwhelming majority. We cited cases were people got multipliers of eight or nine on awards of $100 million recoveries where depositions weren't even taken.

And so I think the 2.3 multiplier request is very fair in this case. And I'd note that I don't think Mr. Kennedy even can seriously question that. I mean he did a class action case and he signed a declaration where when he asked for his lodestar multiplier, he said an enhancement of 1.4 is well within the enhancement range typically granted by Courts for class action representation of 1.25 to 2. So back when he was making

a request on behalf of the U.S. West Retirees Association, he thought that a multiplier of 2 was well within the range.

So I think, Your Honor, that to question that now is just -- it's just not fair. I mean the reality is that this is a case that was litigated for five years. The multiplier is 2.3, if you cut out some hours, maybe it would be 2.5. It's still well within reason when you have cases that say it's 2 to 3. And the other reality is, Your Honor, we know we're asking for a percentage of the fund going into it. This isn't a case where, you know, we're asking for a multiplier or we're defense counsel. We don't have any motivation to overstaff cases. We don't sit there and say, Hey, Let's put 10 partners on it to build up the lodestar. That's not how our business works. I mean if you're a plaintiffs' class action counsel, you're trying to get a recovery, you're trying to do the case, you're doing it on a contingent basis. You're not sitting there saying, How can I get as many hours into the case as I possibly can?

It just makes no sense. You are doing it on a contingency. If you got a multiplier of eight, you know, like some of these people did, they're happy about that. They're not trying to figure out how to make up hours to get it down to a multiplier of four. It just makes no

sense. So I think that's, you know, that's a major underlying issue that people need to address.

The other thing, Your Honor, is I think you look at, you know, you look at their expenses and, you know, it sounds like a lot of money. I mean initially we said we wouldn't exceed 1.7 and then when we, you know, figured everything out after all the bills were, you know, squared away and we had to figure out that everything was right, it was about 1.33 I think was the total amount.

It sounds like a lot, you know, about 400,000 of it is the notice of pendency going out. So that takes you down to about $900,000. You have I think at least another 200-, 250- for just experts that were paid who did reports that were a tremendous benefit to the class and that takes you down to about 700,000 over five years. I mean you're really looking about 130-, $140,000 per year in expenses. You know, and the types of expenses we're claiming are all normal things. I mean photocopies, telephone, you know, messenger. I mean it's money that you take out of your pocket.

I mean those are the kind of things that Courts routinely award. They're the types of things that, you know, I'm sure Qwest pays every time they hire outside counsel that they're paying on the 1st and 15th. I mean

these are just the kind of things that corporations pay and we fronted the money. I mean it's just not fair for someone to say you shouldn't be reimbursed for it five years later when you got $50 million for the class.

As to, you know, some of the in-house time that we used, yeah, you know, we put our in-house accountants in the expenses. I remember years ago we had a case where we put 'em in the lodestar and the Judge said they should be in the expenses, don't put 'em in the lodestar, it makes your lodestar look higher. So it cuts both ways, Your Honor, you can't win for losing. All right?

So the reality is that when we use our in-house forensic accountants, they are the best in the business and I say that because they've been working at the firm, I mean we listed their background, these are guys, all three of 'em that worked on this case or did the majority of the work have CPA's, they've been in Big Six accounting firms. They know their business. I mean I like to say about our guys especially our director that, you know, they're the only people in America that have seen the in-house documents on every major fraud in the last 15 years that's been committed by corporations in this country. And they're well worth what we pay 'em.

And to be honest you'd pay a lot more because when we went out and got an accounting expert or we were

looking at some of their experts' reports and things like that, if you used an outside consultant, you'd pay a heck of a lot more. And I just know that, Your Honor, because they have to do more to get up to speed on the case. They probably have, you know, higher hourly rates oftentimes. And so the reality is, it saves money for the class. And if we didn't use 'em on this case, we could use those people on other cases. So I think that is fair for us to ask for that as an expense as well.

I think, Your Honor, that, you know, the reality is here, this isn't some sort of agreed-to fee. There's no collusion. There's no question about what work was done in this case. I hope the Court has no question about the quality of the work and the type of work that we did and the benefit to the class. And that said, Your Honor, unless the Court has any specific questions, I'll sit down.

THE COURT: I don't. Thank you very much.

MR. DOWD: Thank you.

THE COURT: Anything on behalf of Defendants?

MR. THEIS: Thank you, Your Honor, Larry Theis on behalf of the Defendants. I have really very little to add. I heard Mr. Kennedy raise two issues. One was some confusion as to the source of the funds. I think that's been cleared up. The other was all relating to --

related to the fee and cost application. The only thing that the Court is required to do today is determine the fairness, adequacy, and reasonableness of the settlement. And our filing in response to the -- to all of the objections at page 13 goes through an analysis of numerous cases that hold that the determination of the fee award is a separate determination from the fairness, adequacy, and reasonableness determination.

And so the only thing I wanna add on the fairness determination is I've been doing class actions for 30 years, both prosecuting and defending them. I've never been involved in one that after certification went right up to the last day, the last business day before trial. And why that is important here is that as trial approaches there's a refining process. There's a distilling of the essentials. Both sides -- and you had very experienced counsel on both sides here -- have as perfect knowledge as you can as trial approaches as to what the strengths are and what the risks are.

And we were prepared as Mr. Dowd and Ms. Andracchio they were prepared to put their best case forward. But face it, both sides are looking down the barrel of a gun right before trial. Mr. Dowd and Ms. Andracchio and their colleagues could have ended up with zero here and we strongly felt that they would. But

at the same time, my clients could have faced a very substantial judgment. So the number that's reached in settlement at that time is really defined and distilled as I say by the kiln of the perfect knowledge of the risks of proceeding and the strength. And I think that the number therefore is as close to the right one as you can get under the circumstances.

As Mr. Dowd pointed out, this case was based on an unprecedented premise that a company merged out of existence would have been required to pay a dividend after the merger. Every percipient witness who was at the Board of Directors meeting was prepared to support our view of the case yet there were contemporaneous documents that said something different. There were witnesses who could not explain adequately what had occurred and there's no perfect case on either side. This certainly wasn't. So this settlement is a very fair one, adequate to provide some compensation for a heavily disputed claim and imminently reasonable under the circumstances.

And unless the Court has any questions of Defendants --

THE COURT: No, sir.

MR. THEIS: -- that's our position.

THE COURT: Thank you very much.

MR. THEIS: Thank you.

THE COURT: Mr. Kennedy?

MR. KENNEDY: Thank you, Your Honor. I just wanna address a couple of remarks that were made by Plaintiffs' Counsel to begin with. They indicated that they had tried to contact shareholders to find out who they might be and get some witnesses. Wouldn't it have been easy for them to establish a website? They are after all asking the Court to charge the settlement fund for $105,000 in computer and Lexis research, computerized things without detail. But there was no website.

When I got involved, I looked around for this Amended Complaint. I couldn't find it. There was nothing. There is no website. There was nothing posted for anyone to find out anything. So I think the responsibility was on their part to provide this information and to show that they were interested in the shareholders and the retirees and make it easy for them to know about this case and how to get involved.

And I wanted to point out that yes, there was this decision in the Storage Tech case where Judge Babcock I believe, yes, awarded 30 percent. I was at the hearing. There was no objection. Times are changing. shareholders are beginning to feel that they need to step up and object and express that they think these

attorney's fee awards are getting way out of hand. And the Lerach firm, the Wilberg (sic) firm, they're known across the nation. They run a business. They do this as a business. They do it as a calculated risk. They know what they're doing. They take on so many of these case knowing that they're gonna win some of 'em or get settlements and go on to the next. It's not like they chose a particular one and went after with all their heart. And yes, they did a good job and we don't belittle that but we think enough's enough.

And when you look at the cavalier way they report their attorney's fees reports, nothing said, no detail, unlike in all these other cases they rely on where the Judges looked at the very detail of the time records, specific detail. Magistrate Judge Pringle looked at the detail in the Storage Tech case and found it justified. We don't have any of that detail, because they take the approach, well, they're just so used to getting 30 percent and maybe they should just do it and not say any more about it.

Well, that's -- that's just not the way it should be. We should be looking at the results based on the work put into this and we have no way of verifying this. And they keep talking about 15,000 hours, well, 4,000 of it for paralegals. Paralegals that they are

saying the community which stands to pay 225 an hour. I don't think this community pays paralegals 225 an hour and they want two times that, 400 an hour for paralegals. I don't even charge that and I've been practicing law for 24 years.

And yes, on a recent case that I got almost a million dollar cash settlement, I asked for 1.4, my lodestar, $75,000 is what I got, less than 10 percent. I practice what I preach. I think 1.53 is enough here. And I think the retirees and the shareholders and the silent majority and all the others across the nation are watching these cases now are saying, Judge, give 'em a reasonable amount but it's not the same as holding a lottery ticket. Thank you.

THE COURT: The first issue for the Court to determine is whether the settlement was fair, adequate, and reasonable. And it certainly was. This was litigated by extremely talented lawyers on both sides and it went for five years. On the eve of trial, the Friday before the trial was to start on Monday, I was informed of the settlement. So Counsel for both sides were knowing what the risks were and there was risk on both sides. Whether the record date was June 30th as the Plaintiffs claim or July 10th as the Defendants claim, it was a factual issue, it was very much up in the air.

There was a press release that said June 30th. There was a certified resolution of the Board that said June 30th. But every witness that was at the meeting said it was July 10th. The ordinary course of business was that the dividend record date was the 10th of the month after the quarter. So that issue was extremely difficult for both sides. Both sides had evidence to support their position. Both sides had evidence to refute the other side's position.

Then the legal issue of liability whether you decided it was June 30th or July 10th was another thing that was hotly contested and not clear cut. If it was, we wouldn't have gotten this far. There is case authority that said that once you declare the dividend, it's a contract and you have to pay it, but there was never one case that either side cited to me and I'm sure it didn't exist because they would've found it that said, Yeah, it doesn't matter when you have a merger that it takes effect that eliminates that responsibility to pay the dividend.

So the issue of whether the Plaintiffs were gonna get $245 million plus interest or were gonna get zero was entirely up in the air. And it's easy to say now you should've gotten more, but $50 million is an awful lot of money no matter how you look at it. And

that was a very fair, reasonable settlement under the facts of this case. It was arrived at not early on in the proceeding, not after the -- before the case was certified as a class. Not shortly after it was certified as a class. It went all the way up to the point of trial. And there is no doubt both sides were ready to go to trial. I had their trial brief, I knew what they were prepared to do. We had talked about it. We had rule don the motions in limine, we were ready to go to trial on that Monday morning. There was no doubt about it. And I was surprised when they said they had a settlement 'cause I didn't think -- I thought it was too far gone. So in the Court's mind $50,000 -- 50 million, excuse me -- 50 million is a very adequate settlement.

The Defendants had a theory that even if there was gonna be liability that the amount of recovery was greatly reduced from the $253 million that the dividend would have been and they had a good theory about why that was the case, because the value of the shares of the people would hold afterwards would be diminished by the fact that this great amount of cash had been paid out. So even if Plaintiff were able to prevail on the issue of liability, the issue of damages was very much up in the air.

Again, other factors that make this a fair and

reasonable settlement. And today we have nobody, nobody coming forward who's saying, this settlement was not reasonable. The objector says, This was a great result. And it was a great result. So there is no doubt. There is no argument that this was a fair, adequate, and reasonable settlement arrived at, after fair negotiations, after mediation -- two days in mediation with an experienced mediator. There was no collusion or anything of that nature and there's nobody that would ever claim such a preposterous thing. So the Court is very confident and very secure in saying that this settlement is fair and reasonable.

Now, the issue comes of attorney's fees and costs. And I think one factor I'd like to point out from the start one of the Johnson factors is whether this was a desirable case to bring or was it an undesirable case to bring. We have Counsel for the retired -- retired U.S. West workers here who represents their association. They didn't bring the claim. They knew all the facts. Everybody knew about the record date and then they changed the record date. They didn't bring the lawsuit. There wasn't any other lawyer in the United States that brought this lawsuit, these people did.

There wasn't any other lawyers in the United States that took the gamble that these people did. Not

one other firm anywhere said I'm willing to take that on. I'll go five years. I'll pay out the expenses. I'll put my time and effort on the line. Nobody did. You can say that's a lot of money to get 30 percent of this settlement, but a lot of lawyers had a crack at it and they didn't do it.

But I'll go through the Johnson factors. Time, labor involved was astronomical. The novelty and difficulty of the question. I just mentioned that in talking about the reasonableness of the settlement. This was never clear cut by either side. It took a lot of work to get out the facts, it took a lot of discovery. The experts on both sides were excellent. To prepare to cross-examine those experts was difficult, it took a lot of skill and preparation. To prepare your own experts took a lot of difficulty and skill. The skill required to perform the legal services was extreme.

The Plaintiffs' Counsel faced Defense Counsel that were equally well-prepared and extremely, extremely talented. There wasn't any issue that wasn't fought. It took a great deal of skill to get to the point of trial. The preclusion of other employment, when you put this much time into an effort for five years, obviously, other employment is precluded.

Customary fees, 30 percent has long been

considered a reasonable contingent fee. In cases as simple as a personal injury liability case of an automobile accident, 30 percent on a contingency fee is appropriate. But this is far more complicated than any car accident.

Any prearranged fee. There was not other than it was going to be a contingency. Time limitation imposed by client or circumstances. That really wasn't a factor. The amount involved and the results obtained. As I indicated, there isn't anybody here today that says the result wasn't anything but great.

The experience, reputation, and ability of the attorneys. And I had the opportunity to watch these attorneys throughout this period of time when I had this case and the ability is terrific. The experience and the reputation speaks for itself.

And awards in other similar cases. And 30 percent is not considered any way extreme in fee. I don't look at the lodestar, but if you did there's fees of three to four percent or three or four times are considered normal. This is 2.3. Fees of lodestar of seven or eight percent -- seven or eight have been accepted.

But the fact is they're asking for 30 percent after five years of struggling with the risk of getting

zero. Do the shareholders want more? Absolutely. But They're fortunate they had some lawyers that had the guts to come forward and do it. It's easy to say that's too much money, but this is cash in the shareholders' pocket. This isn't a coupon you take to Blockbuster to get 50 cents off. This is cash. And that cash would not have been obtained without these people doing what they did for five years.

I think the expenses are reasonable. I find Counsel to be honest and if they tell me that's what the expenses, I believe 'em. Most of those expenses were the $400,000 to give notice. The $250,000 to pay for the experts that were absolutely essential. So I find that the expenses are reasonable and necessary in this case.

I approve the settlement and I approve the attorney's fees and I approve the expenses involved. Do you have an order? I think somebody gave me an order, but I don't know where it is now.

MR. DOWD: Your Honor, there's actually three orders. There's an order on the settlement, there's an order approving the plan of allocation that we talked about, and then there is the order awarding attorney's fees.

THE COURT: Okay.

MR. DOWD: May I approach?

THE COURT: Oh, I want to mention that some people weren't here when I mentioned it before early on in the lawsuit when I got it. One of the attorneys on one of the Plaintiffs' side is by the name of Coughlin, the same as my name. I'm absolutely no relation to that person at all.

MR. DOWD: May I approach, Your Honor?

THE COURT: Yes.

(Pause in proceedings.)

THE COURT: I've signed it. A copy for both Plaintiffs' side and Defense side. The originals will stay in the court record.

Mr. Kennedy, I'm gonna write on your motion that your request to intervene is granted, so there is no question that you -- you're in the case and can take whatever action you want.

MR. KENNEDY: Thank you.

THE COURT: Thank you. Court will be in recess.

MR. DOWD: Thank you, Your Honor.

MS. ANDRACCHIO: Thank you, Your Honor.

(Whereupon these proceedings were concluded.)

TRANSCRIBER'S CERTIFICATION

STATE OF COLORADO )
)  SS.
COUNTY OF JEFFERSON )

I, Tami S. Ondik, do hereby certify that I have listened to the CD recording of the foregoing; further that the foregoing transcript pages 1 through 66, were reduced to typewritten form from a CD recording of the proceedings held August 30, 2005, in the Denver County District Court, in the matter of Adele Brody, et al. v. U.S. West, Inc., et al.; and that the foregoing is an accurate record of the proceedings as above transcribed in this matter on the date set forth.

DATED this 17th day of September, 2005.

Tami S. Ondik, AAERT CET**D-301

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|---|---|
| DISTRICT COURT<br>DENVER COUNTY<br>COLORADO<br>1437 Bannock Street<br>Denver, CO 80202 | |
| ADELE BRODY, et al.,<br>Plaintiffs,<br><br>v.<br><br>U.S. WEST, et al.,<br>Defendants,<br><br>and Concerning,<br><br>ELDON GRAHAM, HAZEL FLOYD and MARY HULL,<br>Intervenors. | Case No. 00 CV 4142<br>Division 1 |
| For Plaintiffs:<br>Michael Dowd, Esq.<br>Laura Andracchio, Esq.<br>Jordan Lurie, Esq.<br>Jeff Westerman, Esq.<br><br>For Defendants:<br>Lawrence Theis, Esq.<br>Steven Perfrement, Esq.<br><br>For the Intervenors:<br>Curtis Kennedy, Esq. | |

The matter came on for hearing on August 30, 2005, before the HONORABLE JOHN WALKER COUGHLIN, Judge of the District Court, and the following proceedings were had.

Transcript Prepared By:
CTS West, Inc.
6121 South Quail Way
Littleton, CO 80127
720-922-3581