



Bardacke firm, I was Attorney General of the State of New Mexico from 1983 to 1986.

2. I have practiced law since 1969. I am admitted to practice law in California (1969) and New Mexico (1970). I am also admitted to practice before the United States District Court, District of New Mexico; U.S. Court of Appeals, Tenth Circuit; U.S. Court of Appeals, Ninth Circuit; and the United States Supreme Court.

3. I graduated from the University of California at Santa Barbara (B.A. Cum Laude 1966) and received my juris doctor from the University of California at Berkeley, Boalt Hall in 1969. Since 1969, I have maintained an active litigation practice. My firm and I specialize in major complex litigation, and I regularly appear before all levels of state and federal courts in New Mexico and elsewhere. I have represented the State of New Mexico in *State of New Mexico ex. Rel. Tom Udall v. The American Tobacco, et al*, prosecuting the lawsuit against major tobacco companies and was successful in obtaining a \$1.16 billion settlement, the largest civil settlement in the history of the State of New Mexico.

4. My previous firm and I were one of the counsel in *In Re: Lease Oil Antitrust Litigation (II)*, a class action in the United States District for the Southern District of Texas; a global settlement of approximately \$164.2 million was approved in that case. My previous firm and I were also one of the counsel in *In Re: New Mexico Vitamins Indirect Purchaser Antitrust Litigation* filed in the Second Judicial District Court in Bernalillo County. A nationwide class was certified in the District of Columbia, a settlement was negotiated, and the New Mexico District Court granted approval on April 19, 2002.

5. In addition, I am counsel in a number of class actions brought under the common law and the New Mexico Unfair Practices Act against various life insurance companies on behalf

of a class of persons who purchased life insurance policies and who, by paying premiums on a monthly basis, were paying premiums greater than the guaranteed annual premium specified in their policies. Nationwide classes were certified as part of a settlement in many of these cases, and in others, certification was granted by the court and the cases are still pending.

6. In addition to the complex cases set forth above, I have tried or settled numerous litigation matters in New Mexico involving complex disputes against well-financed and aggressively represented adversaries.

7. I also maintain an active mediation practice in which I have successfully mediated numerous complex litigation matters involving multiple parties and complex issues of law and fact, including class actions.

8. In connection with my litigation practice, I have been paid on both an hourly and contingent basis. Based on my litigation and mediation experience, I am familiar with fair and reasonable rates for legal work in New Mexico and the amount of time reasonably necessary to be invested in complex litigation matters.

9. I have been asked by Plaintiffs' counsel to express an opinion concerning the Plaintiffs' request for approval of their attorneys fees and costs in this matter. In order to render my opinion, I have reviewed the materials provided by Plaintiffs' counsel, including the pleadings, the settlement agreement, the motion for final approval, the brief in support of approval of attorneys fees and costs, and the affidavits in support of same. I have also reviewed and am familiar with the attorneys fees in similar cases, and the law applicable to attorneys fees awards.

10. A case such as this one is risky and time-consuming to bring to a successful

resolution. Such a complex, difficult case can require thousands of hours of attorney and staff time and, had plaintiffs' counsel lost at either the certification stage of the proceedings or at trial, they would have received no compensation for all of their efforts. Moreover, a case of this type against defendants with significant resources such as Defendant Management & Training Corporation can require significant amounts of out-of-pocket expenses. Had plaintiffs not prevailed, they would have lost their entire investment in the case. The knowledge that substantial investments of time and out-of-pocket costs would be required, with no guarantee of reimbursement, also made this case very risky.

11. The settlement in this case represents an excellent result. Through the Plaintiffs' efforts, an unconstitutional strip search policy at the Santa Fe County Detention Center was abolished. In addition, the Plaintiffs secured a substantial settlement fund to compensate those individuals who were subjected to such unconstitutional strip searches. Given the nature of the risk undertaken by Class Counsel and the very favorable result obtained in this case, Class Counsel are entitled to be fully and fairly compensated for their efforts. This is particularly true as the amount to be paid to Class Counsel will not reduce the amount to be paid to the Class Members.

12. It is my experience that in the vast majority of class action settlements in New Mexico and elsewhere, attorneys fees are awarded based on a percentage of the recovery method. This is the method consistently used by the District Court for the District of New Mexico, and has also just been adopted by the New Mexico Court of Appeals. Under the percentage of recovery method, it is typical to award attorneys fees in the range of 25% or more of the total recovery (i.e., the total monetary benefit recovered for the benefit of the class, including attorneys

fees, costs and claims administration expenses).

13. In this case, the Parties engaged in arms-length negotiations and agreed that the Defendants would pay \$2,000,000 for Plaintiffs' reasonable attorneys fees and costs, subject to the Court's approval. In New Mexico, it is customary to charge clients gross receipts tax on attorneys fees, and courts customarily award gross receipts tax in addition to attorneys fees. It is my understanding that the Plaintiffs' reasonably incurred out-of-pocket expenses are approximately \$110,000. Thus, the agreed-upon payment of \$2,000,000 breaks down to \$110,000 in costs, \$1,756,098 in fees, and \$133,902 in gross receipts tax.

14. In my opinion, the amount of fees and costs agreed upon by the Parties through arms-length negotiations is very fair and reasonable and should be approved. The attorneys fee represents approximately 21% of the total fund recovered for the benefit of the class (\$8,500,000), which is on the very low end of commonly approved attorneys fees in similar class action litigation.

15. I have also examined this fee as cross-checked against the Plaintiffs' lodestar. I have reviewed the materials supplied by Plaintiffs' counsel and understand that the Plaintiffs' raw lodestar (to date) is \$539,225. Thus, the agreed-upon fee of \$1,756,098 is equal to applying a multiplier of approximately 3.26 to the raw lodestar. In my experience, multipliers in this range are routinely approved in similar class action litigation and this further supports the reasonableness of the requested attorneys fee.

16. With respect to the hourly rates used by Class Counsel for determining the raw lodestar, I am familiar with the range of rates charged by counsel who have the experience and ability to take on such litigation. For New Mexico counsel, such rates range between \$175 hour

for associates to \$375 per hour for more senior partners. I am familiar with the work product, experience, reputation and competence of Class Counsel in this case. In my opinion, the rates used by Class Counsel (\$300 per hour for partners Robert R. Rothstein, Mark H. Donatelli and John C. Bienvenu), their associates (\$200 per hour) and their staff (\$100 per hour for legal assistants) for calculating the raw lodestar are fair and reasonable and fully justified, compared to what comparable lawyers in this locality charge and receive for work of similar complexity.

17. In addition, in my opinion the amount of time required by Class Counsel to bring this case to a successful resolution was reasonable and evidences an efficient and economical approach to this litigation, while at the same time giving due attention to the many complexities of this case.

18. I have also reviewed the summary of costs incurred by Class Counsel on behalf of the Plaintiffs and the Class. I find these costs to be reasonable in amount. They should be fully reimbursed.

19. I am familiar with the economic realities of practicing in a small law firm. It is difficult and risky for a small law firm to take on large-scale litigation such as this, which requires significant and sometimes overwhelming investment of time and money, with no certainty of recovery, and with payment received, if at all, many years after the work is begun. Counsel who agree to take on such cases, especially those which clearly vindicate the public interest as is true in this case, deserve to be fully and fairly compensated for their efforts. Such compensation is not in any way a windfall, especially when compared to attorneys who are paid on an hourly rate, on a monthly basis, with no risk whatsoever.

19. In sum, it is my opinion that the amount negotiated and agreed to by the Parties in

this case for fees and costs is consistent with the law, consistent with and even on the low end of fees awarded in similar cases, and is fair and reasonable and should be approved.

FURTHER AFFIANT SAYETH NAUGHT.

Paul Barbacke  
PAUL BARBACKE

SUBSCRIBED AND SWORN TO before me this 27<sup>th</sup> day of November, 2006, at Santa Fe, New Mexico.

Jeanne Callaway  
Notary Public

My commission expires:

June 16, 2010