IN THE UNITED STATES COURT OF FEDERAL CLAIMS

HEALTH REPUBLIC INSURANCE COMPANY, Plaintiff, on behalf of itself and all others similarly situated, vs. THE UNITED STATES OF AMERICA, Defendant.	No. 1:16-cv-259-KCD (Judge Davis)
COMMON GROUND HEALTHCARE COOPERATIVE, Plaintiff, on behalf of itself and all others similarly situated, vs. THE UNITED STATES OF AMERICA, Defendant.	No. 1:17-cv-877-KCD (Judge Davis)

OBJECTORS' REPLY IN SUPPORT OF THEIR MOTION FOR AN ACCOUNTING, SAFEKEEPING OF THE DISPUTED FUNDS AND LIMITED DISCOVERY

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I. Introduction

There is no dispute that the rules of professional responsibility apply to all law firms and attorneys, including Quinn Emanuel. Nor is there a credible dispute that the Objecting Class Members are Quinn Emanuel's clients to which it owes ethical duties. It is also beyond dispute that this Court has a fiduciary duty to the Class. Quinn Emanuel concedes that it took $185 million of disputed client funds, distributed those funds to its partners, and resorted to insurance as an unauthorized and inadequate substitute for its ethical duties. Given these undisputed facts, the modest relief requested here is not only eminently reasonable, but is the minimum that is required for the Court to protect the Class: (i) a full accounting; (ii) an order to deposit the disputed funds into an interest-bearing trust account; and (iii) limited discovery into the judgment preservation insurance Quinn Emanuel purchased in order to distribute the funds to its partnership.

Quinn Emanuel's strategy in its opposition is to be dismissive of the ethical rules and its obligations to the Class, and to just ignore the facts and law. For example, it is no answer for Quinn Emanuel to say it was acceptable to take the money out of the claims administrator's account. The problem was what they did next: distributing the funds to partners rather than treating them as "frozen." As the California State Bar's Handbook on Client Trust Accounting for California Lawyers explains:

> You should [] remember [] you can't pay yourself legal fees that your client is disputing, whether or not you feel you've earned them. The moment a client disputes your fees, the disputed amount is frozen in your client trust bank account until the dispute is settled. When the amount of your fees is no longer in dispute, you have an ethical obligation to take those fees out of the client trust bank account as soon as you reasonably can.[1]

Quinn Emanuel's proclamation that it is able and willing to repay any amount this Court ultimately orders is irrelevant. The ethical rules afford no exception for violations by big firms. Moreover, annual revenue is no substitute for cash in a trust. The unsworn promises of one

[1] The 2023 California State Bar Handbook on Client Trust Accounting for California Lawyers at 24. *See also* Dilworth Decl., ¶¶ 42-77 (HR Dkt. 194-1; CG Dkt. 187-1).

Quinn Emanuel partner hardly bind that firm's "powers that be."[2] The amount in dispute is nearly 20% of the firm's (unverified) annual revenue. It is unrealistic to think the firm's cash flow would permit a prompt payment to the Class of even a fraction of that amount. Instead, almost certainly, Quinn Emanuel would want to rely on a judgment preservation insurer that will have its own reasons to delay or deny payment.

Rather than offer evidence of its ability to promptly repay, Quinn Emanuel argues that the Objecting Class Members needed to prove the opposite. But this gets the logic backwards: it is not the Objectors' burden to show Quinn Emanuel could not satisfy a debt; it is Quinn Emanuel's duty to follow the rules of the profession.

Similarly misplaced is the argument that the Objectors should have paid a bond to stay the judgment. As Quinn Emanuel's cases make clear, "[t]he purpose of a supersedeas bond is to protect the appellees from the risk of a later uncollectible judgment, and compensate them for any loss resulting from the stay of execution."[3] Here, there was never any chance Quinn Emanuel would not collect the judgment because the funds were already held in escrow pending resolution of the fee petition.[4] A full bond was, in effect, already posted. It is now the Objectors that face the risk of an uncollectible judgment, not Quinn Emanuel. On this logic, it was Quinn Emanuel that should have posted bond before distributing the award to its partners.[5]

In any event, neither a bond nor stay was necessary because the self-executing Rules of Professional Conduct supply the necessary protection. The Objecting Class Members filed their notice of appeal *while the automatic 30-day stay was in effect*.[6] Thus, at the first moment Quinn Emanuel could have "collected" the fee—which undisputedly occurred after the notice of appeal was filed—the only proper place the funds could have gone was an interest-bearing client trust account.[7] Quinn Emanuel's "status" as "a claimant against the [common] fund" does not render

[2] Oral Argument at 30:04, 30:11, *Health Republic v. US*, 58 F.4th 1365 (No. 22-1018).
[3] *Abbywho, Inc. v. Interscope Recs.*, 2008 WL 11406049, at *3 (C.D. Cal. Aug. 25, 2008).
[4] *See* HR Dkt. 97, 98; CG Dkt. 124, 125.
[5] A notion Quinn Emanuel acknowledges by purchasing judgment preservation insurance.
[6] *See* RCFC 62(a); HR Dkt. 143, 144; CG Dkt. 156, 159.
[7] *See* Dilworth Decl., ¶¶ 13, 62-75 (Opinion 2); Clark Decl. ¶¶ 29-32 (Opinion 3).

the Rules of the profession inapplicable to it. On the contrary, the Rules apply and dictate sequestration of funds when "in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests."[8]

Quinn Emanuel's misplaced outrage about "objector blackmail" and cases enforcing a "quick-pay" provision in settlement agreements are equally unavailing. As Quinn Emanuel's own expert, Brian T. Fitzpatrick, explains: "Courts and commentators characterize the 'blackmail' problem as one that arises when class counsel pay a premium to objectors *whose appeals have no merit* in order to avoid the delays and other complications those appeals will cause in the disbursement of their fee awards."[9] Here, the Objecting Class Members had a meritorious appeal and never sought to extract any premium from Quinn Emanuel. All they ask is for a fair fee to be awarded based on the representations made in the class notice and "taking full account of the relevant attorney-fees considerations as they apply to a particular case."[10]

Moreover, in the context of a law firm that did not want to be bound by the promises it made in the class notice, it is a peculiar choice to now ask that a "quick-pay" provision (retroactively approving the misappropriation) be applied to it. In this case, there is neither an "objector blackmail" problem nor "quick-pay" remedy. Quinn Emanuel's own authority suggests the majority of federal class action settlements actually *lack* a quick-pay provision. [11] In any event, Quinn Emanuel cites no authority for reading a "quick-pay" provision into a non-existent settlement agreement or class notice that Quinn Emanuel's Derek Shaffer argued should be "limited to [its] express terms."[12]

Quinn Emanuel faults the Objecting Class Members for failing to cite a case "ever granting such requests," while simultaneously citing a case that ordered class counsel to provide

[8] Model Rule. 1.15(e); D.C. Rule 1.15(d); Cal. Rule 1.15(c)(2); Ill. Rule. 1.15(e).
[9] *The End of Objector Blackmail?*, 62 Vand. L. Rev. 1623, 1635 (2009) (emphasis added).
[10] *Health Republic Insurance Company v. United States*, 58 F.4th 1365, 1375 (Fed. Cir. 2023).
[11] *See Pelzer v. Vassalle*, 655 F. App'x 352, 365 (6th Cir. 2016) ("[O]ver onethird of federal class action settlement agreements in 2006 included quick-pay provisions[.]") (citation omitted).
[12] Oral Argument at 19:24, *Health Republic v. US*, 58 F.4th 1365 (No. 22-1018).

an accounting and to return funds to an escrow account following vacatur on appeal.[13] For reference, that publicly filed accounting is attached to this reply as Exhibit 1. While that case concerned enforcement of provisions in a settlement agreement—which does not exist here—Quinn Emanuel cannot "invoke such authority when it suits them, but then ignore it when it does not." (Opp. at 4).

Contrary to Quinn Emanuel's claims, the only thing "baseless" or "premature" in the Objectors' motion is Quinn Emanuel's distribution of $185 million to its partners. Quinn Emanuel's silence on its misappropriation of client funds concedes a serious and material ethical violation that finds no support in anything raised by its opposition. The Court, as fiduciary for the Class, should grant the requested relief to protect the Class's interest in the common fund and to ensure that the fee petition is decided on a complete record.

II. Argument

A. The motion is timely and relevant.

Quinn Emanuel labels the Objecting Class Members' motion "premature" and "untethered to the actual task on remand" because Quinn Emanuel "strongly believes" a $185 million fee is "reasonable and warranted in this case." (Opp. at 6). But this ignores the Federal Circuit's observation of a "norm of implicit multipliers in the range of 1 to 4" and the direction on remand to determine "whether there is sufficient justification for an award with an implicit multiplier outside the mainstream of relevant multipliers" because the court "d[id] not see such justification in what Quinn Emanuel ha[d] presented to [it]."[14]

The Federal Circuit also directed the Court to "readdress the Objectors' contentions that Quinn Emanuel has not done enough to justify the lodestar itself—the approximate number of hours and blended rates used to produce the 18-to-19 implicit multiplier." *Id.* [15]

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[13] *See In re: Lumber Liquidators Chinese-Manufactured Flooring Durability Mktg.*, No. 115MD2627AJTTRJ, 2020 WL 5757504, at *12-14 (E.D. Va. Sept. 4, 2020), *aff'd sub nom. In re Lumber Liquidators Chinese-Manufactured Flooring Prod. Mktg., Sales Pracs. & Prod. Liab. Litig.*, 27 F.4th 291 (4th Cir. 2022).

[14] *Health Republic*, 58 F.4th at 1376, 1378.

[15] Among other things, the Objecting Class Members will address additional issues raised by

The Federal Circuit further explained that Quinn Emanuel's 5% fee request must not be treated "as presumptively the proper award." *Id.* Accordingly, Quinn Emanuel's statement that it "strongly believes" it is entitled to a $185 million fee is no more relevant than the Objecting Class Members' opposite belief. It is the "court's task [] to make its own determination of what fee to award, within the range of reasonable possibilities, considering the relevant principles and precedents addressing comparable facts." *Id.* at 1377.

The motion is timely for other reasons. *First*, the relief the Objecting Class Members seek is directly relevant (or "tethered") to the Court's task on remand. Ethical violations are one factor the Court is entitled to consider in "mak[ing] its own determination of what fee to award." *See id.*[16] As the Federal Circuit explained, the Court must determine the appropriate fee "considering the relevant principles and precedents addressing comparable facts," "taking full account of the relevant attorney-fees considerations as they apply to a particular case," and viewed through the lens of a "fiduciary." *Id*. at 1375-77. Quinn Emanuel ignores the motion's page-long list of citations finding ethical violations (including misappropriation and failure to provide an accounting) relevant to the determination of an appropriate fee. (*See* Mot. at 14-16).

Second, the prematurity argument also ignores that Objectors are seeking the judgment preservation insurance (JPI) in discovery as an "agreement about fees" subject to disclosure under RCFC 54(d)(2)(B)(iv) because "'[s]ide agreements' regarding fees provide at least perspective pertinent to an appropriate fee award." Fed. R. Civ. P. 23(h), 2003 Advisory Committee Note. Quinn Emanuel again has it backwards asserting its ethical violations would only be relevant *if* the court orders less than 5%. The ethical violations (and any side agreements bearing on the fee request) are relevant to *whether* the Court should award less than 5%.

Third, the opposition's silence concedes the $185 million has been distributed to current and now former partners, and provides no evidence that Quinn Emanuel can repay any portion of

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Quinn Emanuel's lodestar as filed with its renewed fee petition at the appropriate time, i.e., when they file their opposition to that petition.

[16] *See also, e.g.*, *Rodriguez v. City of N.Y.*, 721 F. Supp. 2d 148, 151-52 (E.D.N.Y. 2010).

this award if ordered returned. The opposition similarly concedes that Quinn Emanuel purchased JPI which the Class will have to rely upon to collect any future judgment. That Quinn Emanuel has misappropriated $185 million in disputed client funds (and substituted insurance for cash) means the motion is ripe. And no case it cites holds Rule 1.15's accounting requirement can be waived (much less by failing to file a motion under FRCP or RCFC 62),[17] nor that it can be premature once a lawyer is in possession of funds subject to a dispute by a client or third party.[18] [19] If Quinn Emanuel's argument is credited, that is tantamount to holding that the client must bear the risk when there is a dispute between the lawyer and client about funds the lawyer received in which the client claims an interest. That turns Rule 1.15 on its head.[20]

Finally, granting the requested relief will allow the Court to fairly discharge its fiduciary duty to protect the Class and ensure that Quinn Emanuel can promptly return any amounts from the common fund to which it is not ultimately entitled. It also ensures Quinn Emanuel fulfills its "duty to be sure that the court, in passing on the fee application, has all the facts, as well as [Quinn Emanuel's] fiduciary duty to the class not to overreach."[21]

B. The RCFC 62 argument is a red herring.

RCFC 62 is relevant to this motion only insofar as RCFC 62(a) automatically stayed execution of the attorney fee judgment for 30 days. Because of the automatic stay, Quinn Emanuel could not have "collected" the judgment until *after* the Objecting Class Members filed their notice of appeal, which left no doubt the attorney fee award was in dispute at the earliest time Quinn Emanuel could have received it. Nor does Quinn Emanuel dispute that it did not order the claims administrator to distribute the funds until *after* the notice of appeal was filed.

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[17] Moreover, it is disingenuous for Quinn Emanuel to argue the Objecting Class Members "waived" any of the relief they now seek when Quinn Emanuel fails to establish it ever provided notice that it ordered the transfer of the disputed fee award to itself as required by Rule 1.15. *See e.g.*, Model Rule 1.15(d); Cal. Rule 1.15(d)(1); Dilworth Decl., ¶¶ 12, 50-53 (Opinion 1).
[18] *See* Dilworth Decl., ¶ 15 (Opinion 4); Clark Decl., ¶¶ 23-28 (Opinion 2).
[19] In fact, Quinn Emanuel's authority indicates this motion would be criticized as tardy if it were filed *after* the fee petition is briefed. *See In re: Lumber Liquidators*, 2020 WL 5757504, at *13.
[20] *See* Dilworth Decl., ¶¶ 82-87 (Opinion 5); Clark Decl., ¶¶ 38-41 (Opinion 5).
[21] *In re "Agent Orange" Prod. Liab. Litig.*, 818 F.2d 216, 223 (2d Cir. 1987).

Quinn Emanuel offers no on-point authority for its contention that "[c]ourts around the country … routinely rule that fee awards are immediately collectible pending appeal unless the appealing party posts bond or otherwise moves for a stay under FRCP 62." (Opp. at 7). The cases Quinn Emanuel cites merely discuss the *standard* for granting a stay under FRCP 62, not whether one is *required* for attorneys to disregard their obligations under the ethical rules.

More importantly, "[t]he cases [Quinn Emanuel] cite[s] are inapposite *fee-shifting* cases, not common fund cases."[22] There was, therefore, no attorney-client relationship between the parties to the fee or stay dispute. Nor did any case hold an attorney could *take* money from an escrow account absent a stay. Instead, they decided whether (and on what terms) a losing party could stay execution of the payment due to a prevailing party. For example:

- *Resolute Forest Prod., Inc. v. Greenpeace Int'l*, 2020 WL 8877819, at *1-3 (N.D. Cal. Oct. 30, 2020) (motion to stay implementation of anti-SLAPP attorney's fees and costs award denied under FRCP 62(d) for failure to file an appeal as required by 62(d)'s plain language.)
- *Abbywho, Inc.*, 2008 WL 11406049, at *2-4 (C.D. Cal. Aug. 25, 2008) (motion to stay attorney's fees award under section 35(a) of the Lanham Act, wherein the losing parties requested the court either waive or substantially reduce required bond, denied because losing parties did not assert they had attempted to obtain a bond or that a bond application had been denied, nor did they propose "an alternative plan that would sufficiently guarantee the judgment creditor's interests.")[23]
- *Strama v. Peterson*, 537 F. Supp. 668, 669-71 (N.D. Ill. 1982) (42 U.S. Code § 1983 defendant was not entitled to a stay without supersedeas bond because the plaintiff "should be afforded the same protection as the ordinary judgment creditor, to be assured immediate payment if his rights are vindicated on appeal.")

And in *In re Progressive Ins. Corp. Underwriting & Rating Pracs. Litig.*, 2007 WL 9752859, at *1-2 (N.D. Fla. Feb. 13, 2007), the court required a law firm to post a bond before staying a fee-shifting award, despite the firm's insistence (similar to Quinn Emanuel's) that it had sufficient assets to pay the fee award. Likewise here—where the safekeeping of disputed client funds required by Rule 1.15 acts as the bond otherwise required to protect a successful appeal—the Court should reject Quinn Emanuel's argument that its supposed wealth exempts it

[22] HR. Dkt. 93 at 10; CG Dkt. 116 at 10.
[23] The court explained that the "purpose of a supersedeas bond is to secure the appellees from a loss resulting from the stay of execution." *Id.* at *3. As discussed above, there was no need for a bond in this case because the entire fee award was already entrusted to the claims administrator (until Quinn Emanuel ordered the money disbursed to itself).

from Rule 1.15. It would be a dangerous precedent to hold that class counsel can treat disputed class-client funds as exempt from the safekeeping requirements of the Rules of Professional Conduct with a "trust us, we're good for it" hearsay statement. And it would be untenable to hold that clients "should be afforded [less than] the same protection as the ordinary judgment creditor, to be assured immediate payment if [their] rights are vindicated on appeal."[24]

Contrary to Quinn Emanuel's assertion, RCFC 62's only application to the present dispute is to show that Quinn Emanuel could not have "collected" the fee award until *after* it was aware that the fee was disputed. No case or ethics opinion holds that a stay under RCFC 62(b) is required to trigger a lawyer's professional obligations.[25]

C. Courts grant the relief sought by the Objectors, or deny it based on "quick-pay" provisions not applicable here.

Quinn Emanuel concedes that here, there is no quick-pay provision to rely upon. (Opp. at 2). So its contention that courts routinely reject similar requests by objectors in other actions as "unnecessary and unwarranted" (Opp at 9) based on cases with quick-pay provisions in settlement agreements is misapplied. Each case cited is easily distinguishable: quick-pay provisions expressly permit distribution pending an appeal. But Quinn Emanuel does not have such a provision. Instead, Quinn Emanuel is subject to Rule 1.15. Moreover, a significant difference is that no court appears to have considered a case of serious and material ethical breaches such as the misappropriation of client funds by class counsel, or the procurement of JPI to hide the misappropriation, accompanied by the potential disclosure of client confidences. Each case rejecting the relief sought here did so pursuant to a controlling "quick-pay" provision in a court-approved settlement agreement—a provision that does not exist here. Or, the court actually granted the accounting and return of funds.

In re: Lumber Liquidators is inapplicable because it was based on a quick-pay provision

[24] *Strama v. Peterson*, 537 F. Supp. at 671.
[25] *See* Dilworth Decl., ¶¶ 67-75 ("A lawyer's professional obligations are not erased by procedural mechanisms that permit parties to challenge or contest judgments."); Clark Decl., ¶ 33 ("Court procedural rules with respect to judgments do not override the ethical obligations of a lawyer.")

in a settlement agreement that "permitted Class Counsel to receive the awarded attorneys' fees prior to the exhaustion of any appeals regarding the Settlement or attorneys' fees." *Id*. at *12 n. 11. The only thing that *is* applicable about *Lumber Liquidators* is that the court there ordered class counsel to "return to the Escrow Account the interest that would have accrued on the award amount previously distributed to Class Counsel under the Quick-Pay provision of the Settlement Agreement from the date of the disbursement(s) through the Effective Date, September 3, 2020, together with an accounting." *Id.* at *13. The accounting ordered in *Lumber Liquidators* was then publicly filed and is attached to this reply as Exhibit 1.

Thus in *Lumber Liquidators*, class counsel was expressly permitted to collect the fee award during an appeal pursuant to a court-approved settlement agreement. The objector's belated motion to enforce the settlement agreement[26] sought return of the funds following vacatur pursuant to a disputed portion of the quick-pay provision that was ultimately resolved in the objector's favor under Virginia law. *Id*. at *12-13. The court awarded the same attorney fee award on remand[27] but—pursuant to the terms of the settlement agreement—ordered an accounting to determine the interest that would have accrued on the award (that was properly distributed in the first instance pursuant to the quick-pay provision), and ordered that interest deposited into escrow. *Id.* at *13-14. That neither quick-pay provision can be found in any agreement at issue in the instant case makes *In re: Lumber Liquidators* irrelevant, other than to show that courts can and do order an accounting and the return of class funds where appropriate.

Similarly, *In re Optical Disk Drive Prod. Antitrust Litig*., 2022 WL 1955672 (9th Cir.

[26] The objector opposed class counsel's fee petition after the Fourth Circuit vacated and remanded the first award, but then *only after* the hearing on the second fee petition (not just after "the funds had been collected" (Opp. at 10)) did the objector: (i) move to enforce the settlement agreement provision to return a vacated fee award; (ii) seek an accounting; and (iii) assert fee forfeiture for breach of fiduciary duty. *Id.* at *12-13 and n. 10, 14. Here, the Objectors timely sought relief (i.e., *before* completion of the fee petition briefing) as discussed above.

[27] Which was not unexpected given the Fourth Circuit's observation "that if the district court were to award the same amount of attorney's fees after applying CAFA's 'coupon' settlement provisions, that would not render the Settlement Approval Order infirm in light of our deferential standard for reviewing such decisions." *Id.* at *4. That is not the case here, where the Federal Circuit "d[id] not see such justification in what Quinn Emanuel ha[d] presented to [it]" to justify the 5% award. *Health Republic*, 58 F.4th at 1378.

June 6, 2022) held "the district court did not err in determining that [class counsel] was under no clear obligation *per the terms of the settlement agreements* to refund immediately the fees" and thus did not reach the issue of whether class counsel violated any ethical rules because the quick-pay provision was controlling. *Id*. at *2 (emphasis added). The Ninth Circuit did *not* hold that generally "there was no basis in the law" to require "return of fees if the fee award was vacated." (Opp. at 9). That decision was decided pursuant to the terms of the court-approved settlement agreement and nothing more.

Quinn Emanuel also argues that the Ninth Circuit refused "to order disgorgement of the full fee" award (Opp. at 9) without acknowledging that: (1) there was no ethical or fiduciary breach because the quick-pay provision permitted class counsel to take the fee award and (2) the Objectors' current motion does not seek any disgorgement (much less full disgorgement)—it merely seeks an order safeguarding the funds until the Court decides a fair fee award.[28]

Whether "courts routinely approve *class settlements* that allow attorneys to collect fee awards pending appeal without requiring immediate repayment of those fees" (Opp. at 10) (emphasis added) is irrelevant because there is no proposed class settlement with a quick-pay provision at issue here. Quinn Emanuel's focus on the common approval of quick-pay provisions in settlement agreements highlights the major flaw of this argument: what would be the point of quick-pay provisions if the default wasn't the *inability* to distribute a fee award pending appeal? Quinn Emanuel is "a leading international law firm"—it knows how to include a quick-pay provision in a class notice or ask the Court for such relief.

[28] Moreover, the Objectors here, unlike the objector in *In re Optical Disk*, are only asking for interest on the portion of the funds ultimately ordered returned to the Class. (Mot. at 13, 16; Opp. at 9). The "full accounting" the Objectors request is sought to, among other things, help determine the interest to be applied to the "portion of the funds that ultimately belongs to the class" (Opp. at 9) because, like in *In re: Lumber Liquidators*, the interest that would have accrued while in the requisite account is relevant to what rate(s) (and thus amount) of interest is due. Quinn Emanuel claims that "[i]f the Court awards a lower fee to Class Counsel, then it is simple to calculate interest on the difference between the original and modified fee awards" (Opp. at 17) but noticeably fails for the second time to explain how it would calculate that interest. *See* Keshavarzi Decl., ¶ 6.

D. Quinn Emanuel's attempt to paint a meritorious appeal as "Objector Blackmail" is misguided.

Not only is there no settlement agreement or quick-pay provision in this case, but the problem courts seek to remedy with quick-pay provisions is similarly lacking. As Fitzpatrick notes, "[t]he virtue of the quick-pay provision is that objectors who bring meritless appeals can no longer delay the point at which class counsel receive their fees." Fitzpatrick, 62 Vand. L. Rev. at 1625. But here, the Objectors' appeal was meritorious, so the blackmail problem is another red herring. And again, the logical inference from Fitzpatrick's statement is that barring a quick-pay provision, an objector *can* "delay the point at which class counsel receive their fees."

Quinn Emanuel's suggestion that the instant *motion* is an instance of "objector blackmail" is equally misguided. (Opp. at 11). The opposition concedes that a court should "enforce ethical codes of conduct" (Opp. at 11), just not against Quinn Emanuel. And while Quinn Emanuel faults the Objectors for failing to "cite a single case granting anything like their requested relief in any case like this one" (Opp. at 11-12), the Objectors can hardly be blamed for being the first class members to discover their attorneys misappropriated the class's funds and may have used client confidences to acquire insurance instead of holding disputed funds in trust. Again the logic is backwards. Quinn Emanuel has not cited a case permitting class counsel, absent a quick-pay or other similar provision, to distribute a fee award subject to an appeal. As discussed below, each of the ethics opinions cited in the opposition is in accord. Even a case cited by Quinn Emanuel granted similar relief (an accounting and return of interest) *even where a quick-pay provision existed*. *In re: Lumber Liquidators*, 2020 WL 5757504 at *14.

E. Rule 1.15 applies to all lawyers, including Quinn Emanuel.

There is nothing "inflammatory" or "baseless" about asserting the ethical rules apply to Quinn Emanuel. (Opp. at 12). And while no ethics opinion has dealt with this precise situation, the Objecting Class Members offered two uncontroverted expert declarations opining that Rule 1.15 does in fact require both an accounting (at any time a lawyer is in possession of disputed funds) and safekeeping of a disputed attorney fee award regardless of any stay of execution

where, as here, the funds were clearly disputed before Quinn Emanuel took possession of them.[29]

The opposition makes several unsuccessful attempts to carve out an unprecedented exception to the Rules of Professional Conduct for class counsel.[30] But the ethical rules, comments and opinions Quinn Emanuel cites do not support such an exception, which would be Quinn Emanuel's burden to establish—not Objectors' burden to refute.

1. Comment 25 to Rule 1.7 is another red herring.

First, Quinn Emanuel recounts how it sent Objectors' Counsel a letter claiming "it did not believe Rule 1.15 applies in this situation because absent class members like United and Kaiser were not its 'clients' for purposes of that Rule, as comment 25 to Rule 1.7 makes clear" and then faults the Objectors for "not mention[ing] comment 25 to Rule 1.7 anywhere in their motion" (Opp. at 5)—despite the opposition failing to maintain this argument.

The Objectors did not address this argument because it is meritless: the plain language of ABA comment 25 makes clear that any potential "class action" exception would be limited to Rule 1.7 (conflicts), and thus has no effect on Rule 1.15 (safekeeping property):

> When a lawyer represents or seeks to represent a class of plaintiffs or defendants in a class-action lawsuit, unnamed members of the class are ordinarily not considered to be clients of the lawyer *for purposes of applying paragraph (a)(1) of this Rule*. Thus, the lawyer does not typically need to get the consent of such a person before representing a client suing the person in an unrelated matter. Similarly, a lawyer seeking to represent an opponent in a class action does not typically need the consent of an unnamed member of the class whom the lawyer represents in an unrelated matter."

ABA Model Rule 1.7, cmt. 25 (emphasis added).[31] Thus, a "class counsel" exception to Rule

[29] *See* Dilworth Decl., ¶¶ 13-15 (Opinions 2-4); Clark Decl., ¶¶ 23-34 (Opinions 2-4).
[30] These include the baseless argument that Quinn Emanuel did not receive the fee award "as a custodian of funds for class members" but rather "as 'a claimant against the [common] fund.'" (Opp. at 12). All that is required is that the "property … comes into a lawyer's possession in the course of a representation." Restatement (Third) of the Law Governing Lawyers § 44 cmt. b (2000). And here, Quinn Emanuel received the fee award "in the course of a representation."
[31] *See also* Dilworth Decl., ¶ 90, n. 10 (noting that "the ABA Comment does not state that unnamed class members are *never* clients of class counsel; the Comment just says that their 'consent' is typically not required for a 'direct adversity' conflict" and that "CRPC 1.7 does not contain any Comment equivalent to Model Rule 1.7's Comment [25]"); Clark Decl., ¶ 21 ("Thus, contrary to Class Counsel's assertion, Objectors are not 'unnamed members of the class' as contemplated and discussed in Comment 25 to ABA Rule 1.7 (assuming, for argument's sake, that Comment had any application outside of Rule 1.7).").

1.15 finds no support in Comment 25 to Rule 1.7.

Moreover, Comment 25 only relates to Rule 1.7(a)(1) concerning "direct adversity" conflicts between two or more current clients of the lawyer, *not* Rule 1.7(a)(2)'s "material limitation" conflicts prohibition which states "[a] concurrent conflict of interest exists if: … (2) there is a significant risk that the representation of one or more clients will be materially limited by … a third person or by a personal interest of the lawyer."[32] Therefore, Quinn Emanuel's attempt to shield itself from Rule 1.7(a)(2) or 1.8 (Opp. at 21) is equally mistaken. For example, if the JPI (i.e., a third-party insurer) *requires* Quinn Emanuel to seek the same 5% award on remand, such provisions could "materially limit" Quinn Emanuel's representation of its opt-in class clients (Rule 1.7(a)(2)), or constitute "compensation for representing a client from one other than the client" without consent, informed or otherwise (Rule 1.8). Disclosure of all terms of the JPI policies is the only way to assess whether or not such conflict(s) exist.

Quinn Emanuel cites no authority holding that the Objectors' "adversarial position with respect to the question of Class Counsel's fees" renders any of the relevant ethical rules inapplicable. (Opp. at 16). Class counsel's fiduciary duties and ethical obligations do not suddenly disappear when a fee petition is filed or disputed.[33]

2. The certified class members who opted in are Quinn Emanuel's clients.

When it suits Quinn Emanuel, it argues that the Objectors are its "sophisticated individual clients."[34] But for purposes of Quinn Emanuel's ethical obligations, it argues the Objectors do not possess a "complete attorney-client relationship" sufficient to confer "any Rule 1.15 rights" to an accounting and safekeeping of disputed client property. (Opp. at 16). Regardless, this argument is misplaced because, among other things, Rule 1.15 does not contemplate or

[32] *See* ABA Model Rule 1.7(a) and Comment 25.
[33] Quinn Emanuel concedes as much: "To be clear, Class Counsel recognizes it has important and ongoing duties to the class." (Opp. at 16). It's just not clear from the opposition which ongoing duties these are. Moreover, "[s]ince July 2020 [the time of the original fee petition] … Class Counsel has continued to work for the risk corridor subclasses, as well as build on its risk corridors work for the cost-sharing reduction class members (almost all of which are also risk corridor class members)"—that is, Quinn Emanuel continues to represent its Class clients in this same matter.
[34] HR Dkt. 84 at p. 29.

distinguish between complete vs. partial attorney-client relationships. And nothing in Rule 1.15 (or its comments) says class counsel does not have accounting or safekeeping duties to the class.

Quinn Emanuel can't escape Rule 1.15 by arguing the "Objectors [do not] have any Rule 1.15 *rights* to the funds at issue" (Opp. at 16). The Rule does not confer *rights*; it imposes *duties* on lawyers. [35] Those duties are clear, and it's clear that Quinn Emanuel did not obey them.

Quinn Emanuel cherry-picks portions of Newberg and Rubenstein's Class Action treatise to support the uncontested proposition that there are points in class action representation where absent class members do not have an attorney-client relationship with class counsel. (Opp. at 15-16). But nearly every case or treatise cited there uniformly finds an attorney-client relationship *after certification*, even in the context of an opt-out class.[36] As for the notion that even after certification, "absent class members … are not clients for *some conflicts purposes*" (Opp. at 15 citing Newberg § 19:2), that statement directs to Newberg § 19:21 which states, exactly as the Objectors have argued with respect to comment 25 to Rule 1.7, that:

> The first sentence of comment 25 delineates the absence of an attorney-client relationship between class counsel and the absent class members *for this purpose* [paragraph (a)(1) of Rule 1.7]. **The qualification is important because absent class members are considered clients for other purposes, including under the ethical rules**; thus, for example, once a class is certified, opposing counsel is limited in its capacity to communicate with absent class members because they are now clients of class counsel *for those purposes*.[37]

Quinn Emanuel cites no comment to, opinion or case interpreting any version of Rule 1.15 finding any type of exception for class counsel. Nor does Quinn Emanuel even attempt to rebut the two expert opinions finding the Objectors were clients under the ABA, California and

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[35] *See* Dilworth Decl., ¶ 33; Clark Decl., ¶ 19 ("The ABA Model Rules and the D.C. Rules of Professional Conduct both *obligate lawyers to do several things* when lawyers hold disputed property on behalf of clients or third parties. Whether Objectors were clients or third parties, the lawyer's accounting and safekeeping obligations remain the same.") (emphasis added).

[36] *See, e.g.*, Newberg, *supra*, § 19:2 ("[O]nce a class has been certified, the default presumption is that there is an attorney-client relationship between class counsel and the absent class members."); Newberg, *supra*, § 19:2 n.3 (collecting cases finding a "complete" attorney-client relationship between class counsel and unnamed class members after certification); *see also* ABA Formal Op. 07-448 (October 20, 2007) ("Additionally, unnamed class members in a class action lawsuit will be deemed after certification of the class to be represented by class counsel, absent their affirmative election to 'opt out' of the certified class.").

[37] Newberg, *supra*, § 19:21 (bolded emphasis added, italics in original).

D.C. Rules.[38] And the cases cited for the proposition that "[C]ourts have recognized that class counsel do not possess a traditional attorney-client relationship with absent class members" (Opp. at 14-15) all concern issues *pre-certification*[39]—or contain surrounding (but omitted) statements negating any argument the ethical rules do not apply to Quinn Emanuel here, e.g.: "Yet, there clearly is a duty imposed upon class counsel—by the rules of professional conduct and by Fed. R. Civ. P. 23—to protect the entire class fairly and adequately."[40]

The Objecting Class Members undoubtedly became Quinn Emanuel's clients for all relevant purposes when they opted in to the certified class actions in *Health Republic* and *Common Ground*, and nothing in Quinn Emanuel's opposition holds otherwise.

3. In any event, the client vs. third party distinction is yet another red herring.

Quinn Emanuel disputes that Rule 1.15 applies to Objectors whether they are clients or third parties. (Opp. at 14). But Rule 1.15 by its own terms applies to *both* clients and third parties—which encompasses the universe of parties outside of Quinn Emanuel—so all Quinn Emanuel is really arguing is that Rule 1.15 does not apply to *it*. But each of the ethics opinions cited in opposition underscore Rule 1.15's application to Quinn Emanuel in the present dispute.

a. California State Bar Formal Opinion No. 2006-171

Quinn Emanuel contends "California authorities [ ] addressed exactly this situation in an ethics opinion noting that '[f]unds properly withdrawn from a client trust account ... neither retain nor regain their trust account status' even if a client 'later dispute[s]' the withdrawal.

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[38] *See* Dilworth Decl., ¶¶37-41 ("Here, there was an attorney-client relationship between Quinn Emanuel and the Objectors. *See* Mark Tuft, Ellen Peck, Kevin Mohr, *California Practice Guide: Professional Responsibility* (The Rutter Group) (2019), paragraph 3:131.20, p. 3-72 ("… where the class is certified, an attorney acting as class counsel represents *all class members (including unnamed members*) (emphasis in original); *see also* ABA Formal Op. 07-448 (October 20, 2007)"); Clark Decl., ¶¶21-22 (Opinion One) ("Objectors were clients of Class Counsel.").

[39] *In re Cmty. Bank of N. Virginia*, 418 F.3d 277, 313 (3d Cir. 2005); *see also In re McKesson HBOC, Inc. Sec. Litig.*, 126 F. Supp. 2d 1239 (N.D. Cal. 2000).

[40] *Third Circuit Task Force Report Selection of Class Counsel Third Circuit Task Force on Selection of Class Counsel*, 208 F.R.D. 340, 347–48 (2002); *see also In re Chicago Flood Litig.*, 289 Ill. App. 3d 937, 942 (1997) ("Accordingly, class counsel will be deemed to fully represent all class members only after a court has certified the class and the opt-out time period has expired, giving putative class members time to decide whether to participate in the class.")

Furthermore, such funds "do not need to be re-deposited into the attorney's [client trust account]." (Opp. at 14). But that contention is premised on the funds being "properly withdrawn from a client trust account." And California ethics expert, Andrew Dilworth, already explained that COPRAC Formal Opinion No. 2006-171 dictates that the disputed funds here never lost their trust account status because they necessarily—and now undisputedly—were not "fixed" at the time Quinn Emanuel prematurely distributed the funds to itself. [41]

And the situation in Opinion No. 2006-171 was not at all like the present dispute. That opinion involved a lawyer who had a fixed contingency fee agreement with the client. As required by the California Rules, the lawyer notified the client when the settlement check was received, and provided the client with a written accounting, including the proposed distribution pursuant to the fee agreement. The client reviewed and signed off on the accounting, and approved the proposed distribution. The attorney deposited the check in the attorney's client trust account and then distributed the money pursuant to the agreed distribution. *One week later,* the client called the attorney for the first time asserting the fee was too high and seeking $10,000 returned. *See* COPRAC Opinion No. 2006-171, at 1-2. But here, it is undisputed that the Objectors put Quinn Emanuel on notice of the dispute before the firm distributed the funds.

b. D.C. Ethics Opinion 293

The portion of D.C. Ethics Opinion 293 that Quinn Emanuel relies upon is inapplicable because it concerns a lawyer's obligation "to safeguard funds that come into the lawyer's possession where ownership interests are claimed by both the lawyer's client and a third party or parties" and provides guidance "for the lawyer who is unsure how to respond to a third party's

[41] *See* Dilworth Decl., ¶¶13, 67-77. ("Consistent with the provisions of rule of professional conduct 1.15, any distribution by Quinn Emanuel to itself, its attorneys, its staff, or others, of any funds received from the Claims Administrator as attorney's fees, at least following the Objectors' filing of Notices of Appeal, while Quinn Emanuel's entitlement to such funds was 'in dispute' and pending appellate resolution, would be ethically improper; once Quinn Emanuel had notice of the 'dispute' created at least by the filing of the Notices of Appeal, its interest in any subsequent monies received from the Claims Administrator for attorney's fees was not 'fixed.' … *see also* COPRAC Formal Opinion No. 2006-171, *3 (funds misappropriated from a CTA, or withdrawn before an attorney's fee becomes 'fixed' are funds in which the client has a whole or part ownership interest). Nor is Quinn Emanuel's right to such funds currently 'fixed.'")

claim or her client's dispute with that claim." This portion of the opinion is irrelevant here because the dispute is between the Objectors and Quinn Emanuel, not between one of Quinn Emanuel's clients and a third party. The only portion of that opinion that is on point states that "[b]ecause of the lawyer's duty of loyalty to the client, the client's mere assertion of a claim is enough to prevent the lawyer from withdrawing any disputed property: 'There is no requirement that the dispute be genuine, serious, or bona fide, … The lawyer may not take possession of property the ownership of which is disputed by the client until it is absolutely clear that the dispute with the client has been finally resolved.'" [42] So, "a threatened *certiorari* petition to the Supreme Court would also qualify." (Opp. at 13).

c. Illinois State Bar Association Advisory Opinion No. 20-06

Quinn Emanuel cites Illinois State Bar Opinion No. 20-06 for the proposition that "any Rule 1.15 obligation disappears when funds from which any fees will be deducted are deposited into an account controlled by the court," implying that the Treasury's deposit of the full judgment with the claims administrator erases Quinn Emanuel's Rule 1.15 obligations (Opp. at 3). The Illinois opinion is not remotely on point here. There, only after the settlement check was received and deposited into a trust account did the client object to a prior lawyer's lien, asserting he had committed legal malpractice (a claim that was meritless and time-barred). The opinion says "the most appropriate way to protect the [second] Lawyer and all persons involved" would be to "file an interpleader action." Then "the court would likely have [the second lawyer] transfer the funds at issue from her trust account to an account of the court clerk. At that point, she no longer has the problem of being in the middle of conflicting parties, and it will be left to the court to decide the substantive issues between the Client and the third party."

This opinion clearly does not stand for the proposition that the dispute between the Objectors and Quinn Emanuel was somehow over because "the fees were deposited into the

[42] The opinion states a third party must have a "just claim" against a lawyer's client to trigger Rule 1.15's safekeeping requirements in the face of a client's demand for distribution and here, the Objectors would meet that standard even if it applied. *See* Clark Decl., ¶¶ 22.

Court-approved claims administrator's account, and the claims administrator distributed them to Class Counsel in accordance with the Court's judgment." (Opp. at 13-14). This is a nonsensical reading, especially when here the dispute was crystallized *after* the fees were deposited with the claims administrator, but *before* the claims administrator distributed them to Quinn Emanuel.[43]

F. The Court can and should grant discovery into the JPI pursuant to RCFC 54.

Quinn Emanuel both ignores and distorts the language of RCFC 54(d)(2)(B)(iv) (and the notes and cases interpreting it) to claim Quinn Emanuel doesn't have to disclose the terms of the insurance which will be the "mode of payment" if the Court orders any portion of the initial $185 million award returned.[44] Quinn Emanuel accuses the Objectors of "wish[ing] to go on a fishing expedition without any logical justification" while at the same time failing to deny that: (i) the JPI was an agreement entered into, prior to the Federal Circuit's decision, requiring Quinn Emanuel to seek the same 5% award on remand; (ii) coverage limitations might apply to preclude or limit coverage; (iii) the JPI would not pay any claim (even if covered) until after all appeals are exhausted; and (iv) client confidences were or may have been disclosed to insurers.

First, as RCFC 54(d)(2)(B)(iv) and the 2003 Advisory Committee Notes make clear, the Court may order disclosure of "the terms of any agreement about fees for the services for which the claim is made" and courts give weight to not only "agreements *among the parties* regarding the fee motion" (Opp. at 20), but also "to agreements between class counsel *and others* about the fees claimed by the motion."[45] That is because "'[s]ide agreements' regarding fees provide at least perspective pertinent to an appropriate fee award." *Id.* Given the Federal Circuit has found no "justification" for such an award (at least based on "what Class Counsel provided in July 2020"), a provision in the JPI requiring Quinn Emanuel to seek 5% on remand provides

[43] Moreover, the point in Opinion No. 20-06 was that the disputed fees sat protected with the court so the second lawyer's safekeeping requirements were fulfilled. Here, Quinn Emanuel could fulfill this obligation by returning the funds to the claims administrator or, as would presumably be more beneficial for both the Class and Quinn Emanuel, deposit the funds in an interest-bearing client trust account earning millions of dollars in interest on a yearly basis. Yet it refuses to do so.
[44] None of the cited authorities (Opp. at 18-19) are relevant or support denying discovery here.
[45] Fed. R. Civ. P. 23(h), 2003 Advisory Committee Note.

"perspective" on why Quinn Emanuel "strongly believes" it should be awarded the same amount, even in light of the Federal Circuit's opinion.

Next, Quinn Emanuel argues that all the discovery RCFC 54(d)(2)(B)(iv) "allows" has "already [been] disclosed" because Quinn Emanuel provided "the terms of its fee agreements with the class representatives." (Opp. at 19). For starters, this is false: Quinn Emanuel has made conflicting representations about the fee agreements, but it hasn't produced any agreements much less all of their terms.[46]

More importantly, RCFC 54 does not say *only* fee terms are relevant, it says the court may order disclosure of "the terms of *any agreement about fees* for the services for which the claim is made." RCFC 54(d)(2)(B)(iv) (emphasis added). The JPI is clearly relevant as "an agreement about fees" that are the subject of Quinn Emanuel's fee motion.[47]

Quinn Emanuel also ignores the authority suggesting courts *should* regularly order disclosure. For example, as Newberg and Rubenstein explain:

> While Rule 54(d)(2)(B)(iv) makes disclosure of such agreements dependent on a judicial order, there are at least two reasons that courts *should regularly order disclosure*. First, given that the court is acting as a fiduciary for absent class members in overseeing the settlement approval and fee process,[48] there is a strong argument that requiring transparency as to the fees is in the class's interest and hence a court *should so order their disclosure*. … Second, in evaluating the merits of the fee petition, courts have "given weight to agreements among the parties regarding the fee motion, and to agreements between class counsel *and others* about

[46] Quinn Emanuel has previously claimed it "already disclosed *the details* of its retainer agreements with Health Republic and Common Ground." (HR Dkt. 188 at 3-4; CG Dkt. 182 at 3-4) (emphasis added). All that Quinn Emanuel has stated in its briefing is that "Health Republic and Common Ground both agreed to attorneys' fees of 25% of any gross recovery" but then in the one declaration disclosing any "details" states "Common Ground agreed to an attorney's fee of <u>up to</u> 25% of the gross recovery in the event of a class action settlement or judgment." *See* (HR Dkt. 84 at 21; 84-1 ¶ 8; 93 at 3-4.)

[47] *See, e.g.,* Newberg, *supra* § 15:12; Fed. R. Civ. P. 23(h), 2003 Advisory Committee Notes.

[48] *Citing In re High Sulfur Content Gasoline Products Liability,* 517 F.3d 220, 228, 69 Fed. R. Serv. 3d 1516 (5th Cir. 2008) ("The district court's close scrutiny of fee awards serves to 'protect the nonparty members of the class from unjust or unfair settlements affecting their rights as well as to minimize conflicts that may arise between the attorney and the class, between the named plaintiffs and the absentees, and between various subclasses.' The court's review also 'guards against the public perception that attorneys exploit the class action device to obtain large fees at the expense of the class.'") (*quoting Strong v. BellSouth Telecomm., Inc*., 137 F.3d 844, 849, 1998-1 Trade Cas. (CCH) ¶ 72098, 40 Fed. R. Serv. 3d 462 (5th Cir. 1998)). *See also id.* at 229 (concluding a "lack of transparency [in fee allocation] supports a perception that many of these attorneys were more interested in accommodating themselves than the people they represent").

the fees claimed by the motion." Newberg, *supra* § 15:12 (emphasis added).

Quinn Emanuel claims "[t]here is no need to delve into Class Counsel's internal finances or business decisions on a fishing expedition when Class Counsel is clear about what it can and will do, *if* necessary, with respect to the fee award." (Opp. at 21). But Quinn Emanuel cannot hide the terms of the JPI by saying "trust us, we're good for it" without providing "a scintilla of evidence suggesting Class Counsel is []able to stand by its promises to the Court and class." (Opp. at 20-21). The rules of ethical conduct are "prophylactic"—the Objectors do not have to wait to be damaged by Quinn Emanuel's conduct to enforce them.[49] Moreover, the JPI is neither Quinn Emanuel's "internal finances [n]or business decisions." Here, it is the "bond."

Finally, while adversity may be inherent in the fee application process when fees come from a common fund, that does not mean—and Quinn Emanuel has cited no case or opinion holding—that class counsel has free reign to ignore its ethical obligations and delegate safekeeping of disputed client funds to unknown third parties under unknown terms.[50] In particular, that adversity would not permit a lawyer to use "confidential information of a client for the lawyer's pecuniary gain."[51] [52]

Dated: May 23, 2023

Respectfully submitted,

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[49] *See, e.g., General Motors Corp. v. City of New York*, 501 F.2d 639, 643 n. 11 (2d Cir.1974) ("[T]he court's inherent power to assure compliance with these prophylactic rules of ethical conduct has not been questioned at any stage of these proceedings.").
[50] *See* Dilworth Decl., ¶¶ 16, 18, 57, 80-81 (non-delegable duties); Clark Decl., ¶ 33-34 (same).
[51] Law Governing Lawyers, *supra*, § 60(2) and cmt. j. ("Subsection (2) prohibits a lawyer from using or disclosing confidential client information for the lawyer's personal enrichment, *regardless of lack of risk of prejudice to the affected client*.") (emphasis added).
[52] To the extent client confidences were disclosed, that fact would be relevant to the fee petition because any "benefits" received by the JPI—i.e., any delta between the initial and final fee award—"are deemed to have been acquired for the benefit of the principal, and the principal is entitled to recover those benefits."[52] *Id*., *see also* Cal. Civ. Prac. Business Litigation § 36:19.

EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

IN RE: LUMBER LIQUIDATORS CHINESE-MANUFACTURED FLOORING PRODUCTS MARKETING, SALES PRACTICES AND PRODUCTS LIABILITY LITIGATION,	MDL No. l:15-md-02627 (AJT/MSN)
IN RE: LUMBER LIQUIDATORS CHINESE-MANUFACTURED FLOORING DURABILITY MARKETING AND SALES PRACTICES LITIGATION	MDL No. l:16-md-02743 (AJT/MSN)
This Document Relates to ALL Cases	

DECLARATION OF STEVEN J. TOLL REGARDING ACCOUNTING

I, Steven J. Toll, declare and state as follows:

1. I am the Managing Partner of Cohen Milstein Sellers & Toll PLLC, one of Co-Lead Counsel in the Formaldehyde case and one of Class Counsel pursuant to the Settlement reached in the Formaldehyde and Durability cases. Pursuant to the Court's Order of September 4th, I asked EagleBank, which is the financial institution where the settlement fund in these cases are deposited in an Escrow Account, to prepare a calculation showing how much interest would have been earned on the funds withdrawn in late 2018 for attorneys' fees, costs and expenses.

2. Exhibit A attached hereto is the document prepared by EagleBank and sent to me in response to my request. This document indicates the interest that would have been earned on the funds withdrawn. That amount is $173,624.13 which I have caused to be deposited back in the Escrow Account today, pursuant to the Court's Orders of September 4th and September 11th.

Attached as Exhibit B hereto is the EagleBank Activity Deposit Accounts Report reflecting that this deposit was made today.

I declare under penalty of perjury that the foregoing is correct.

Dated: September 15, 2020

Steven J. Toll

EXHIBIT A

200309987

rate	balance	issue date	maturity date	number of days	number of periods	total	bal - total	tran amt	bal +/-
1.4650%	**694,500.00**	11/20/18	11/30/18	10	0.0273973	694,778.80	278.80		$694,778.8017
1.3660%	694,778.80	11/30/18	12/07/18	7	0.0191781	694,960.84	182.03		$694,960.8352
1.2670%	694,960.84	12/07/18	01/18/19	42	0.1150685	695,974.75	1013.92		$695,974.7523
1.2180%	695,974.75	01/18/19	05/23/19	125	0.3424658	698,883.84	2909.09		$698,883.8395
1.2200%	698,883.84	05/23/19	08/05/19	74	0.2027397	700,614.59	1730.75		$700,614.5867
1.2230%	700,614.59	08/05/19	09/03/19	29	0.0794521	701,295.69	681.11		$701,295.6924
1.1240%	701,295.69	09/03/19	11/04/19	62	0.1698630	702,635.91	1340.21		$702,635.9067
0.8760%	702,635.91	11/04/19	03/04/20	121	0.3315068	704,679.30	2043.40		$704,679.3025
0.7300%	704,679.30	03/04/20	03/18/20	14	0.0383562	704,876.64	197.34		$704,876.6383
0.2500%	704,876.64	03/18/20	08/03/20	138	0.3780822	705,543.20	666.57		$705,543.2043
0.2000%	705,543.20	08/03/20	09/03/20	31	0.0849315	705,663.06	119.86		$705,663.0598

$11,163.06

rate	balance	issue date	maturity date	number of days	number of periods	total	bal - total	tran amt	bal +/-
1.4650%	**2,731,028.91**	11/20/18	11/30/18	10	0.0273973	2,732,125.26	1096.35		$2,732,125.2607
1.3660%	2,732,125.26	11/30/18	12/07/18	7	0.0191781	2,732,841.08	715.82		$2,732,841.0830
1.2670%	2,732,841.08	12/07/18	01/18/19	42	0.1150685	2,736,828.18	3987.09		$2,736,828.1772
1.2180%	2,736,828.18	01/18/19	05/23/19	125	0.3424658	2,748,267.78	11439.60		$2,748,267.7761
1.2200%	2,748,267.78	05/23/19	08/05/19	74	0.2027397	2,755,073.71	6805.93		$2,755,073.7091
1.2230%	2,755,073.71	08/05/19	09/03/19	29	0.0794521	2,757,752.07	2678.36		$2,757,752.0667
1.1240%	2,757,752.07	09/03/19	11/04/19	62	0.1698630	2,763,022.28	5270.21		$2,763,022.2815
0.8760%	2,763,022.28	11/04/19	03/04/20	121	0.3315068	2,771,057.66	8035.38		$2,771,057.6635
0.7300%	2,771,057.66	03/04/20	03/18/20	14	0.0383562	2,771,833.66	776.00		$2,771,833.6605
0.2500%	2,771,833.66	03/18/20	08/03/20	138	0.3780822	2,774,454.84	2621.18		$2,774,454.8425
0.2000%	2,774,454.84	08/03/20	09/03/20	31	0.0849315	2,774,926.16	471.32		$2,774,926.1585

$43,897.25

rate	balance	issue date	maturity date	number of days	number of periods	total	bal - total	tran amt	bal +/-
1.2670%	**7,560,000.00**	12/31/18	01/18/19	18	0.0493151	7,564,725.05	4725.05		$7,564,725.0477
1.2180%	7,564,725.05	01/18/19	05/23/19	125	0.3424658	7,596,344.65	31619.60		$7,596,344.6505
1.2200%	7,596,344.65	05/23/19	08/05/19	74	0.2027397	7,615,156.58	18811.93		$7,615,156.5776
1.2230%	7,615,156.58	08/05/19	09/03/19	29	0.0794521	7,622,559.69	7403.11		$7,622,559.6870
1.1240%	7,622,559.69	09/03/19	11/04/19	62	0.1698630	7,637,126.81	14567.13		$7,637,126.8149
0.8760%	7,637,126.81	11/04/19	03/04/20	121	0.3315068	7,659,337.00	22210.18		$7,659,336.9982
0.7300%	7,659,337.00	03/04/20	03/18/20	14	0.0383562	7,661,481.89	2144.89		$7,661,481.8914
0.2500%	7,661,481.89	03/18/20	08/03/20	138	0.3780822	7,668,726.96	7245.07		$7,668,726.9648
0.2000%	7,668,726.96	08/03/20	09/03/20	31	0.0849315	7,670,029.70	1302.74		$7,670,029.7049

$110,029.70

rate	balance	issue date	maturity date	number of days	number of periods	total	bal - total	tran amt	bal +/-
1.2670%	**586,368.54**	12/31/18	01/18/19	18	0.0493151	586,735.02	366.48		$586,735.0240
1.2180%	586,735.02	01/18/19	05/23/19	125	0.3424658	589,187.50	2452.48		$589,187.5029
1.2200%	589,187.50	05/23/19	08/05/19	74	0.2027397	590,646.59	1459.09		$590,646.5932
1.2230%	590,646.59	08/05/19	09/03/19	29	0.0794521	591,220.79	574.20		$591,220.7930
1.1240%	591,220.79	09/03/19	11/04/19	62	0.1698630	592,350.65	1129.86		$592,350.6482
0.8760%	592,350.65	11/04/19	03/04/20	121	0.3315068	594,073.31	1722.67		$594,073.3139
0.7300%	594,073.31	03/04/20	03/18/20	14	0.0383562	594,239.68	166.36		$594,239.6760
0.2500%	594,239.68	03/18/20	08/03/20	138	0.3780822	594,801.62	561.94		$594,801.6183
0.2000%	594,801.62	08/03/20	09/03/20	31	0.0849315	594,902.66	101.04		$594,902.6614

$8,534.12

EXHIBIT B

EAGLEBANK

Activity - Deposit Accounts

Report created:	09/15/2020 11:31:35 AM (ET)
Account:	055003298 • *9987 • Checking • Lumber Liquidators Settlement Fund • Available $10,282,976.47
Date range:	9/14/2020 to 9/15/2020
Transaction types:	All transactions
Detail option:	Includes transaction detail
Total by day:	Includes totals by day within the selected date range

055003298 • *9987 • Checking • Lumber Liquidators Settlement Fund • Available $10,282,976.47

Post Date	*Reference*	*Additional Reference*	*Description*	*Debit*	*Credit*	*Calculated Ending Balance*
09/15/2020 11:31 AM (ET)			BOOK TRANSFER CREDIT REF 2590802L FUNDS TRANSFER FRMDEP XXXXX7445 FROM		$173,624.13	$10,282,976.47
09/15/2020	**Total Calculated Credits (1 Item)**				**$173,624.13**	
09/15/2020	**Totals**			**$0.00**	**$173,624.13**	