IN THE CHANCERY COURT OF HINDS COUNTY, MISSISSIPPI

JIM HOOD, ATTORNEY GENERAL ex rel. STATE OF MISSISSIPPI,	:	
Plaintiff,	:	
v.	:	**Civil Action No. G2004-1542**
MICROSOFT CORPORATION,	:	
Defendant.	:	

PETITION TO APPROVE FEES AND OVERRULE QUASI-OBJECTION

Plaintiff's attorneys bring this petition for an order resolving a dispute over a quasi-objection to the payment of the legal fees and expenses of Plaintiff's counsel as part of the successful settlement of the Attorney General's action against Microsoft. This Court expressly retained jurisdiction over such disputes.[1] This petition is filed to approve as reasonable, and order the distribution of, fees and expenses held by Plaintiff's attorneys in trust and to fulfill any ethical duties under the Mississippi Rules of Professional Conduct that may be implicated by the quasi-objection.

The letter authored by the State Auditor was sent to Plaintiff's counsel. He copied the Court but has not filed any official objection with the Court. It is inappropriate for the Auditor to lurk in the background threatening legal action if the attorneys' fees and costs that are now held in a trust account are distributed. To bring transparency to this process and to subject the actions of the Auditor to judicial review, this petition is submitted.

[1] See Paragraph 5 of this Court's Order dated June 11, 2009. All Mississippi lawyers are admitted before this Court, and counsel from Susman Godfrey, LLP and Boies, Schiller & Flexner LLP were admitted pro hac vice to this Court.

INTRODUCTION

In this case, Mississippi obtained the largest cash settlement payment of any of the more than forty states that sued Microsoft for monopolizing the market in personal computer operating systems and software. Timely, Microsoft paid the State $40 million in cash pursuant to the Settlement, during an extremely difficult economic period and a state budget crisis. Moreover, the State may receive an additional payment in the second half of 2010 and another payment twelve months thereafter. In addition to the $40 million already paid to the State, the Settlement also afforded Mississippi consumers benefits worth up to $60 million. Mississippi residents that bought Microsoft software products from 1996 to the present could have received up to $60 million in vouchers that were redeemed on future purchases of virtually any computer hardware or software, whether or not those purchases involve Microsoft products. Given the relative size of Mississippi's population and computer use compared to other states, this was a remarkable result.

The Attorney General made sure that a reasonable attorneys' fee, and only a reasonable fee, was paid in this case. The Attorney General retained Mr. Brent Hazzard as a Special Assistant Attorney General to represent him in the Microsoft case. Mr. Hazzard then affiliated both Mississippi-based lawyers and nationally-recognized experts in the antitrust litigation. The Retention Agreement, which is available to the public on the internet, capped fees on a sliding scale below 25%. As a result, the contracted fees earned by Plaintiff's counsel are significantly below market rates for contingent fee work.

The landmark result came only after more than four years of difficult litigation, and at large financial risk and expense to the lawyers prosecuting the claims for the Attorney General. By any measure, the fees and expenses earned by counsel are fair and reasonable:

- Plaintiff's counsel bore the *entire risk* of an adverse result. Counsel would have received no payment whatsoever without a settlement or favorable verdict.
- Plaintiff's counsel paid over $1.7 million in out-of-pocket expenses, again entirely at their own risk, much of which went to pay a leading antitrust economist, who produced a 200-page report including sophisticated economic analysis, critical deposition testimony, and assisted counsel in evaluating Microsoft's four expert reports.
- Plaintiff's counsel expended millions of dollars worth of attorney time, entirely at their own risk.
- Pursuant to the Settlement Agreement, Microsoft paid $10 million to cover all of Plaintiff's attorneys' fees and expenses. The net fee amount of $8.3 million after expenses is less than the attorneys were entitled to receive under the Retention Agreement and the private attorneys will receive no additional compensation. This fee constitutes only 7.5% of the total gross settlement.

This petition is filed because the State Auditor mailed a letter to one of Plaintiff's attorneys, Brent Hazzard, with a copy to the Court, objecting to counsel fees being paid as set forth in the Settlement Agreement approved by this Court. The Auditor claims that a special legislative appropriation is required to pay counsel the fee owed under their contract with the Attorney General. The Auditor did not file an objection during the time ordered by the Court, and as of the date of this filing, has never filed an objection with the Court.

Regardless of whether the Auditor waived his objection by not filing with the Court during the time permitted, the unique features of the Microsoft settlement, along with established law, require rejection of the Auditor's position. Further, the Court should order that the

contracted for fees were appropriately paid and may be distributed to counsel for several independent reasons:

- The fees and costs paid under the fee contract are completely fair and reasonable because counsel litigated the Microsoft case for years and incurred substantial expenses to achieve a landmark recovery for the State and its citizens.
- The Mississippi Supreme Court has held that a contingent fee agreement creates an equitable assignment of settlement funds to a lawyer.
- The Mississippi Supreme Court long has held that lawyers have a prime and paramount lien on settlement funds in the amount of their fees and expenses.
- Even if an equitable assignment or lien were not available, the same fee could be awarded as a percentage of the fund that was created by the settlement. The unique circumstances of this settlement – with Microsoft paying $40 million in cash to the State and making $60 million worth of vouchers available directly to Mississippi citizens – permits payment to counsel under the Mississippi common fund statute and the Mississippi Consumer Protection Act.
- The Attorney General has statutory authority to hire and pay counsel a contingent fee without any legislative appropriation.
- The monies in question were never state funds, thus outside the scope of the Auditor's control.
- The Auditor's position violates the separation of powers doctrine.

Plaintiff's counsel requests that the Court order that Susman Godfrey LLP (which currently holds in its trust account the $10 million owed to Plaintiff's counsel for fees and expenses) distribute to each firm its contractual share of the fees and expenses.

RELEVANT FACTS

1. More than five years ago, on August 9, 2004, Attorney General Jim Hood signed a written Retention Agreement for legal services with Hazzard Law LLC through its principal, Brent Hazzard. *See* exhibit 1.[2]
2. The Retention Agreement states: "Whereas the Attorney General has determined that claims should be made against Microsoft Corporation . . . . The Office of the Attorney General hereby retains the Law Firm of Hazzard Law LLC ("Law Firm") and its principal member, Brent Hazzard, [who] are hereby designated as Special Assistants Attorney General to investigate, research and file claims in any appropriate Court . . . "
3. With respect to compensation, the Retention Agreement states:
    a. "Notwithstanding the potential difficulties, Law Firm shall be compensated for its efforts on the following basis:" and attaches two exhibits setting forth a "structured contingent fee schedule."
    b. "All reasonable and necessary costs of litigation including, but not limited to, court costs, travel, witness fees, consultants, accounting, and expert fees and expenses, as shall be approved by the Attorney General, shall initially be borne entirely by Law Firm, but shall be reimbursed from any gross recoveries from pursuit of such claims on a case-by-case basis[.]"
    c. "The Law Firm shall receive no compensation other than that set out above. In the event that no recovery is realized, the Law Firm shall receive no compensation or reimbursement."

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[2] The Retention Agreement is, and has been for some time, available to the general public and the State Auditor at www.ago.state.us/images/uploads/forms/Microsoft_080904.pdf.

4. The Retention Agreement also states that Hazzard "may associate other attorneys at its own expense".
5. In 2004, Hazzard associated the other Mississippi-based counsel of record.
6. On August 31, 2004, Hazzard and associated counsel filed this suit against Microsoft.
7. In March 2008, with the Attorney General's consent, Hazzard additionally associated the law firms of Susman Godfrey LLP and Boies Schiller & Flexner LLP – both firms with nationally-recognized expertise in complex antitrust litigation – to help litigate the Attorney General's claims against Microsoft.
8. Based on the Court's pretrial rulings, the primary claims being pursued were for civil fines and restitution under the Mississippi Consumer Protection Act.
9. On June 11, 2009, nearly five years after the complaint was filed, the Attorney General and Microsoft signed a Settlement Agreement. *See* exhibit 2.
10. The Settlement Agreement provides up to $60 million in vouchers directly to Mississippi consumers who purchased Microsoft products. The Agreement further provided for payment to the State of Mississippi of $28 million in cash plus half the value of any unclaimed vouchers (the "Reversion"), with Microsoft making a non-refundable prepayment of $22 million of the Reversion. The $40 million cash payment was received by the State in July 2009. The total value of the settlement exceeds $100 million.
11. The Settlement Agreement further required Microsoft to wire $10 million directly to Plaintiff's counsel for fees and expenses. To achieve this significant settlement, Plaintiff's counsel directly expended more than $1.7 million in expert fees and other expenses, in addition to devoting several million dollars worth of their time. After expenses are

recovered from the $10 million payment, Plaintiff's counsel will divide a fee of approximately $8.3 million.

12. After a hearing on June 11, 2009, this Court issued an Order Approving Settlement and Release and Entering Final Judgment. *See* exhibit 3.

13. On June 24, 2009, the State Auditor sent a letter to Mr. Hazzard objecting to payment of any attorney fees without a special act of the State Legislature. *See* exhibit 4.

14. The Auditor's letter states: "[T]his correspondence constitutes an objection to the portion of the Microsoft Settlement Agreement allowing payment of $10 million to outside counsel for the State of Mississippi without prior legislative approval . . . . Through this notice, the State Auditor does not contest the fair and reasonable compensation of private counsel for the State of Mississippi in the Microsoft matter, but Miss. Code Ann. 7-5-7 and Mississippi Supreme Court precedent require that these same attorneys make application to the Legislature for approval of its fees and payments through legislative appropriation."

15. The Settlement Agreement required that Microsoft not wire any money for the settlement payment or attorneys' fees until the time to object had passed and time for appeal had run.

16. Although the Auditor mailed a copy of his letter to the Court, he never took any formal action to object to the Settlement Agreement.

17. Pursuant to the Court's order and the Settlement Agreement, on July 21, 2009 Microsoft wired the settlement funds, consisting of $40 million to the State of Mississippi, as well as $10 million to Susman Godfrey's trust account at JPMorgan Chase Bank.[3]

18. Even a meritless dispute or claim by the Auditor may raise potential issues under Mississippi Rule of Professional Conduct 1.15(c), which states: "When a lawyer is in possession of

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[3] The Retention Agreement's contingent fee schedule entitles Plaintiff's counsel to much more than $10 million in fees and expenses.

property in which both the lawyer and another person claim an interest, the property shall be kept separate by the lawyer until completion of an accounting and severance of their respective interests. If a dispute arises concerning their respective interests, the lawyer shall disburse the portion not in dispute, and keep separate the portion in dispute until the dispute is resolved."

19. Given this ethical rule and the Auditor's letter disputing counsel's entitlement to the $10 million payment for fees and expenses under the Settlement Agreement, Susman Godfrey has continued to hold the funds in its trust account. Plaintiff's counsel brings this petition to resolve the meritless dispute raised by the Auditor's letter.

JURISDICTION

This petition is properly before the Court. Paragraph 5 of the Order approving the Settlement Agreement states: "Without affecting the finality of this judgment, the Court hereby retains continuing and exclusive jurisdiction over all matters relating to the administration, consummation, and enforcement of the terms of the Settlement Agreement and the settlement embodied therein."

A prompt ruling on the appropriate payment of fees and expenses to undersigned counsel is necessary because the ethical issues raised in the Auditor's quasi-objection have required counsel to continue to hold in trust the funds belonging to them.

STANDARD OF REVIEW

The trial court is the appropriate body to award attorney's fees and costs. *Miss. Power & Light Co. v. Cook,* 832 So.2d 474, 478 (Miss.2002) citing *Mauck v. Columbus Hotel Co.,* 741 So.2d 259, 269 (Miss.1999). "Unless the chancellor is manifestly wrong, [her] decision regarding attorney fees will not be disturbed on appeal." *Bredemeier v. Jackson,* 689 So.2d 770,

778 (Miss.1997). "The word 'manifest,' as defined in this context, means 'unmistakable, clear, plain, or indisputable.'" *Mosley v. Atterberry,* 819 So.2d 1268, 1272 (Miss.2002). "In appeals from Chancery Court, our scope of review is limited. [The Supreme Court] will not reverse a Chancellor's findings of fact where they are supported by substantial credible evidence in the record." *Hammett v. Woods,* 602 So.2d 825, 827 (Miss.1992), citing *Clark v. Myrick,* 523 So.2d 79, 80 (Miss.1988). The Supreme Court "'will affirm the decree if the record shows any ground upon which the decision may be justified. . . [The Supreme Court] will not arbitrarily substitute [its] judgment for that of the chancellor who is in the best position to evaluate all factors. . . '" *Tucker v. Tucker,* 453 So.2d 1294, 1296 (Miss.1984) (*quoting Yates v. Yates,* 284 So.2d 46, 47 (Miss.1973)). In order for the Supreme Court to say that the chancellor has abused her discretion, there must be insufficient evidence to support her conclusions. *Mabus v. Mabus,* 910 So.2d 486, 488-89 (Miss.2005) citing *Tucker,* 453 So.2d at 1296-97.

ARGUMENT

1.

The Contractual Fees and Expenses Are Fair and Reasonable

The Court should approve payment and distribution of $10 million for counsel's fees and expenses currently held in trust because this amount, as well as the contractual terms of the Retention Agreement, is fair and reasonable by any standard, including the guidelines of the Mississippi Supreme Court and the Rules of Professional Conduct. If this petition is granted, moreover, Plaintiff's counsel will be paid significantly less than they are entitled to under the Retention Agreement.

The Mississippi Rules of Professional Conduct establish the following factors to determine the reasonableness of a legal fee: (1) the time and labor required, the novelty and

difficulty of the questions involved, and the skill requisite to perform the legal service properly; (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer; (3) the fee customarily charged in the locality for similar legal services; (4) the amount involved and the results obtained; (5) the time limitations imposed by the client or by the circumstances; (6) the nature and length of the professional relationship with the client; (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and (8) whether the fee is fixed or contingent. *See* MISS. R. PROF. COND. 1.5; *McKee v. McKee,* 418 So.2d 764, 767 (Miss. 1982). Plaintiff's counsel will address the factors that appear relevant to this specific action.

(a) The time and labor required, the novelty and difficulty of the questions involved, and skill requisite to perform the legal services properly

Examining the time, labor, difficulty and skill required in this matter, it is clear that the fee is more than fair and reasonable. First, it took approximately five years of extensive litigation and thousands of hours of work by over fourteen lawyers, and their staff of paralegals and legal secretaries, to position this matter for settlement. The attorneys had to examine hundreds of thousands of documents from several other proceedings including *United States v. Microsoft*, *In re Microsoft*, and multiple state class actions. Second, Plaintiff's counsel researched and analyzed complex and novel legal issues ranging from *parens patriae* standing, to interstate/intrastate regulation and collateral estoppel, to the interpretation and application of the Mississippi Antitrust Act and the Mississippi Consumer Protection Act, both substantively and as to remedies.

Also evidencing the difficulty of the questions involved and the skill required by Plaintiff's counsel is the fact that Microsoft retained Sullivan & Cromwell LLP for its defense in this matter. Sullivan & Cromwell is indisputably one of the leading law firms in the world, and

has defended Microsoft since 1991 in multiple government antitrust actions, and dozens of private competitor suits and class action antitrust cases in numerous jurisdictions. Taking into account the settlement size in this matter, the adversary's unlimited resources, and the knowledge and skill of Microsoft's counsel, it is undeniable that Plaintiff's counsel exhibited an extremely high level of skill to resolve this case successfully.

(b) The fee customarily charged in the locality for similar legal services

The $8.3 million attorneys' fee for this action is well below the range of the fees customarily charged in the State of Mississippi. The Mississippi Supreme Court has established that a proper and fair contingent fee should not exceed fifty percent of net recovery. *Koehring Company v. Hyde Construction Co.,* 236 So.2d 377, 387 (Miss.1970). While Mississippi does not have a state class action procedure, the decisions of Mississippi federal courts provide guidance in similar cases. For example, Senior District Judge Glenn H. Davidson in *Batchelder vs. Kerr -Mcgee Corp*, 246 F. Supp.2d 525 (N.D. Miss. 2003), approved a 25% contingency fee award. Judge Davidson stated in another class action that "[i]n light of these and other decisions considered by the court, the undersigned is of the opinion that the 25% benchmark is well centered within the range of fees normally awarded . . . ." *In re Catfish Antitrust Litigation,* 939 F. Supp. 493, 503. (N.D.Miss.1996). See also *Nelson v. Waring*, 602 F. Supp. 410 (C.D.Miss. 1983) (Senior Judge L.T. Senter, Jr. approved a $450,000 fee on a $1.85 million class settlement – approximately 24%); *In re Prudential-Bache,* 1994 WL 86682, *1 (E.D.La. Mar. 7, 1994) (noting typical range of 17.5% to 33% for fees); *In re Tenneco Inc. Sec. Litig.,* Civil Action No. H-91-2010 (S.D. Tex. June 19, 1992) (approving a fee of 25% of benefit achieved of $50 million); *In re First Republic Bank Sec. Litig.*, CA 3-88-0641-H (N.D. Tex. Feb. 28, 1992) (27.5% fee award); *In re Middle South Utils. Sec. Litig.*, Civil Action No. 85-3681 Section "H",

1991 WL 275769, at *1, 1991 U.S.Dist. LEXIS 18062, at *2 (E.D.La. Dec. 17, 1991) (20% fee award).

Considering the settlement here included $40 million in cash paid to the State, $60 million in vouchers made available to Mississippi consumers, businesses, cities, counties and schools, and $10 million for the State's obligation to its attorneys for a total value of $110 million, the attorneys' fees of $8.3 million is less than 10% of the value obtained in the settlement. Indeed, looking solely at the State's $40 million initial cash recovery, the fee amounts to only 20.75%.[4] Either evaluation demonstrates that the fee is below customary charges in this locale, and is eminently fair and reasonable.

The contractual contingent fee percentages are set out in Attachment B to the Retention Agreement. *See* exhibit 1. The reasonableness of these percentages is further established because:

- The contingent percentages in the Retention Agreement – which, as noted, was and is posted on the Attorney General's web site – are the standard terms used by the Attorney General's office and were not negotiated.
- In cases such as this one, where fact and expert discovery are complete but trial has not started, the contractual schedule entitles counsel to 20% of sums recovered up to $25 million and 18% of sums between $25 and $75 million.
- These rates – 20 and 18 percent – are well below the contingent fee percentages typically paid to lawyers in Mississippi and around the country, for major, complex contingent fee litigation.

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[4] Because the State may be entitled to further cash recoveries depending on the amount of unclaimed vouchers, and because the vouchers that are claimed and used by Mississippi residents will provide substantial value in the millions of dollars, the 20.75% fee calculation actually overstates the percentage of attorneys' fees. Even so, it is still well within or below the customary range.

- When lawyers pay the expenses during a case, the contingent percentage is typically at least 33%, and frequently higher.
- Although the terms of the Retention Agreement would entitle counsel to claim a substantially larger fee, counsel seeks an order confirming a fee of only $8.3 million.

(c) *The amount involved and the results obtained*

The amount of expenses which the attorneys advanced (and put at risk), the amount of damages at stake, and the results obtained by this litigation team establish that the attorneys' fees are fair and reasonable. The Retention Agreement required Plaintiff's counsel to pay *all expenses* during the course of the case. Plaintiff's counsel advanced, entirely at their own risk, more than $1.7 million in expenses, most of which was used to hire a prominent economist as an expert witness, and the remainder on other costs to get the case ready for trial. This large amount was paid out of the lawyers' operating accounts to further the State of Mississippi's claims seeking tens of millions of dollars of damages on behalf of the State, political subdivisions, businesses and its citizens, and is expressly recoverable under the Retention Agreement out of the gross value of any recovery by the State.

This case produced the largest cash payment to any State of the more than forty states that have sued Microsoft. This is a remarkable result, especially given the comparative size of Mississippi's population and computer penetration. Accordingly, by the measure of the amount involved and the results obtained, the fees earned and expenses incurred by counsel are fair and reasonable.

(d) The experience, reputation, and ability of the lawyers performing the services

The lawyers retained for this matter brought an extensive and diverse level of knowledge, experience, and ability to this litigation.[5] Boies, Schiller & Flexner is known for landmark cases including *United States v. Microsoft*, *Bush v. Gore*, *In re Vitamins*, ($1.1 billion antitrust settlement for an illegal cartel), and *American Express v. Visa and MasterCard* (over $4 billion antitrust settlement, the largest ever for a single plaintiff). Plaintiff's counsel specifically associated Susman Godfrey because of their successful representation of private companies against Microsoft, including Gateway (settled for $150 million), Novell ($536 million cash settlement) and Caldera (publicly reported settlement of $275 million). The Mississippi lawyers brought a vast amount of legal knowledge and experience from a combined one hundred and sixty years of legal experience consisting of over 100 jury trials and 200 bench trials, cumulatively. The experience, reputation, and ability of the lawyers advocating for the State substantiate that the fees and expenses, by any measure, are fair and reasonable. Accordingly, the fees earned and expenses incurred by counsel should be approved by the Court.

2.

Mississippi Law Gives Counsel an Equitable Assignment and Paramount Lien for their Fees and Expenses

Despite the Auditor's quasi-objection that counsel's contingent fee can only be paid through a special legislative appropriation, "the law of this state has long been settled that an attorney has a prime and paramount lien on the funds which his services as an attorney has produced for his client, and that this lien applies alike to exempt as well as nonexempt funds."

[5] The litigation team included three former United States Supreme Court law clerks: David Barrett clerked for Justice Thurgood Marshall from 1976-77, Harry Susman clerked for Justice Anthony Kennedy from 1997-98, and Stephen Shackleford, Jr. clerked for Justice Stephen Breyer from 2006-7. It also included an Assistant County Prosecutor of Hinds County and a member of the Complaint Tribunal for the Mississippi Bar. As a group, the Plaintiff's legal team have tried hundreds of cases and argued scores of appeals in a wide array of subject areas.

Abernathy v. Savage, 141 So. 329, 330 (Miss. 1932). More than a century ago, the Mississippi Supreme Court held that "[t]he rule in this state has always been that an attorney has a lien on the funds of his client for the services rendered in the proceeding by which the money was collected." *Halsell v. Turner*, 36 So. 531 (Miss. 1904). The attorneys' lien "exists upon the money, papers and writings of the client in the attorney's hands, which is denominated a retaining lien. Such lien exists upon the judgments and decrees, and the proceeds thereof, and is called a charging lien." *Collins v. Schneider*, 192 So. 20, 22 (Miss. 1939). The charging lien establishes that the money currently held in trust is the property of the attorneys, not the State. The lien accordingly should be foreclosed or otherwise held to eliminate the baseless claim against those funds made by the Auditor.

Moreover, the attorney's lien is paramount to any other claims on the proceeds of a settlement. "This lien applies so long as the attorney has the funds in his possession, and is paramount to any other claim." *Halsell*, 36 So. at 531; *see also Abernathy,* 141 So. at 330 ("This lien applies so long as the attorney has the funds in his possession and is superior to any other claim."). For purposes of the lien, an attorney has possession so long as the attorney retains control of the funds. *See Abernathy,* 141 So. at 331 (attorney retained possession of funds for purposes of lien when funds were deposited in a bank account in the client's name but which required the attorney's signature before a check could be issued). Here, Plaintiff's counsel controls the funds for purposes of satisfying the lien by holding the funds in Susman Godfrey's trust account.

The lien also exists regardless of the type of fee arrangement between the lawyer and client. "The rule is the same whether there exists an express contract between attorney and client for a stated fee, or whether there is only an implied contract to pay the reasonable value of

services rendered." *Halsell*, 36 So. at 531. In particular, the lien exists for funds recovered by lawyers working on a contingent fee basis. *See Abernathy*, 141 So. at 330 (attorney retained on a contingent fee basis had lien on settlement funds).

The existence of this long-standing lien principle is fatal to the Auditor's quasi-objection. The Auditor does not and cannot seriously dispute that the Attorney General has the power to enter into a contingent fee contract. As explained below, *see infra* at 20, express Mississippi statutes, the Mississippi Supreme Court, and the common law all confirm the power of the Attorney General to enter into such contracts. Instead, the Auditor's position is that while the Attorney General may sign contingent fee contracts, the lawyers cannot be paid pursuant to such contracts unless the Legislature approves the ultimate distribution of funds. The flaw with the Auditor's position is that once the Attorney General signs a contingent fee contract, the attorney's lien attaches to any recovery. The State no longer has an ownership interest in that portion of the recovery required to satisfy the attorney's lien. As a result, the Auditor is wrong to assume that the money wired to the attorneys as part of the Settlement Agreement belongs to the State.

In addition to the long-recognized principle of a paramount lien, which attaches to any recovery, the Mississippi Supreme Court more recently has held that a client's contingent fee contract creates an equitable assignment to the lawyer of a prospective settlement from the beginning of the case. *See Poole v. Gwin, Lewis & Punches, LLP*, 792 So.2d 987, 990 (Miss. 2001). In that case, Poole hired the Gwin firm on a contingent fee basis to protect her interest in her husband Drouet's estate. The claim was settled, but Poole reneged on the contingent fee. The Supreme Court held that a contingent fee agreement "creates an equitable assignment under Mississippi law. Chancery courts have jurisdiction over 'actions to enforce equitable

assignments.'" *Id.* The Court went on to "find that the contingent fee agreement created an equitable assignment to the Gwin firm of a portion of Poole's interest in Drouet's estate. . . . ." *Id.*

"The general rule is that the right to receive money due or to become due under an existing contract may be assigned; assignment may be enforced by the assignee, who essentially stands in the shoes of the assignor, taking whatever rights the assignor possessed." *Southern Mississippi Planning and Dev. Dist. v. Alfa General Ins. Co.*, 790 So.2d 818, 821 (Miss. 1992). Under the doctrine of equitable assignment, "the assignor [*i.e.*, the State in this case] retains no control over the fund assigned or any authority to collect the debt assigned." *Corpus Juris Secundum* § 66 (Assignments) (2004).

The foregoing Supreme Court authority unequivocally establishes that Plaintiff's counsel are the rightful owners of the settlement funds held in trust, and have the right to distribute those funds. Even if the funds held in trust somehow could be construed as the property of the State rather than the attorneys, the lien and assignment rights of counsel would permit an award and payment of fees and costs based on the equitable authority of the Court. That is true whether the Court analyzes the situation as enforcement of a paramount lien on the funds that have been paid, as an equitable assignment on a prospective settlement from the inception of the action, or both. In other words, the Mississippi courts have established rules for resolving the dispute raised by the Auditor's letter, and those rules make clear that no special legislation is required.

3.

This Court Can Award Attorneys' Fees and Expenses Out of the Settlement Funds pursuant to Mississippi Code §§ 11-53-37 and 75-24-19

As one of several alternative grounds for the relief sought here, the fees and expenses should be paid and distributed because of the common benefit created by the attorneys. "The

common-fund doctrine 'rests on the perception that persons who obtain the benefit of a lawsuit without contributing to its cost are unjustly enriched at the successful litigant's expense.'" *Yerby v. United Healthcare Ins. Co.*, 846 So. 2d 179 (Miss. 2002) (*quoting Boeing Co. v. Van Gemert*, 444 U.S. 472 (1980)). The United States Supreme Court has explained this equitable doctrine as follows:

> Since the decisions in *Trustees v. Greenough*, 105 U.S. 527, 26 L. Ed. 1157 (1882), and *Central Railroad & Banking Co. v. Pettus*, 113 U.S. 116, 28 L. Ed. 915, 5 S. Ct. 387 (1885), this Court has recognized consistently that a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole. *See Mills v. Electric Auto-Lite Co.*, 396 U.S. 375, 24 L. Ed. 2d 593, 90 S. Ct. 616 (1970); *Sprague v. Ticonic National Bank*, 307 U.S. 161, 83 L. Ed. 1184, 59 S. Ct. 777 (1939); *cf. Hall v. Cole*, 412 U.S. 1, 36 L. Ed. 2d 702, 93 S. Ct. 1943 (1973). The common-fund doctrine reflects the traditional practice in courts of equity, . . . and it stands as a well-recognized exception to the general principle that requires every litigant to bear his own attorney's fees, *Alyeska Pipeline Service Co. v. Wilderness Society*, 421 U.S. 240 at 257-258, 44 L. Ed. 2d 141, 95 S. Ct. 1612. The doctrine rests on the perception that persons who obtain the benefit of a lawsuit without contributing to its cost are unjustly enriched at the successful litigant's expense. . . Jurisdiction over the fund involved in the litigation allows a court to prevent this inequity by assessing attorney's fees against the entire fund, thus spreading fees proportionately among those benefited by the suit.

Boeing Co. v. Van Gemert, 444 U.S. at 478.

The Microsoft case involved two unique features that make the common fund doctrine applicable. First, the Settlement Agreement did not provide benefits only to the government of the State of Mississippi. Rather, the Settlement Agreement required that $60 million in vouchers be made available directly to Mississippi consumers. The Mississippi Code expressly gives this Court the power to award attorney's fees out of a recovery where the benefits of the recovery were conveyed to others in addition to just the plaintiff itself -- a so-called "common fund" theory. Specifically, Miss. Code § 11-53-37 provides:

> Where a party hereafter institutes a suit for the benefit of himself and all others similarly situated, and thereby there is in such suit recovered or preserved property or a fund for the common benefit, the chancery court may make an

> allowance to such party of the reasonable costs incurred, which costs shall include the necessary disbursements, and reasonable solicitor's fees, out of the property recovered or preserved for the common benefit.

Although the Mississippi Supreme Court has prohibited class actions in this State, the Legislature never has repealed § 11-53-37. Thus, in the absence of class action litigation, the only sort of litigation where a party could institute suit "for the benefit of himself and all others similarly situated" that results in a recovery of "a fund for the common benefit" is a case like the instant one where the Attorney General sought and obtained direct relief for consumers. Therefore, under § 11-53-37, this Court is expressly authorized to award the $10 million in fees and expenses out of the common recovery.

Moreover, even if § 11-53-37 did not exist, this Court, as a court of equity, has the power to award fees under the "common fund" theory. As the United States Supreme Court recognizes, "[t]he common-fund doctrine reflects the traditional practice in courts of equity." *Boeing*, 444 U.S. at 478 (1980). In *Boeing*, the Supreme Court noted that the value of a common-fund recovery includes all benefits potentially available to beneficiaries whether or not the beneficiaries opt to collect the money. *Id.* at 480 ("Their right to share the harvest of the lawsuit upon proof of their identity, whether or not they exercise it, is a benefit in the fund created by the efforts of the class representatives and their counsel."). Thus, under the traditional common-fund doctrine, the Microsoft litigation yielded a $60 million common-fund for citizens of Mississippi who purchased qualifying Microsoft products in the past, and the existence of that fund provides a basis to enter the award sought in this petition.

Second, the State's recovery of money was pursuant to a settlement of claims that, by virtue of the Court's rulings on motions to dismiss, consisted principally of claims for civil

penalties under § 75-24-19 of the Mississippi Consumer Protection Act ("MCPA").[6] No judgment was entered awarding the State civil penalties, but the settlement reflects resolution of that claim. Under § 75-24-19(1)(b), this Court is empowered to award half of any recovery directly to the Attorney General's office, with the other half deposited in the State's General Fund. The statute also provides that the Attorney General may recover attorney's fees.[7]

This Code provision gives the Court authority to award a portion of the recovery directly to the Attorney General for use in paying the cost of attorneys hired to enforce the MCPA. The Attorney General is empowered by § 75-24-19(1)(b) to pay counsel their fee directly without any legislative appropriation. Alternatively, this petition asks this Court to do exactly that by overruling the quasi-objection and approving payment of $10 million to counsel.

4.

The Attorney General Has Full Authority to Pay Counsel a Contingent Fee without Legislative Appropriation

The Auditor's position also should be rejected because Mississippi law grants the Attorney General full authority to hire and pay counsel a contingent fee without any need for a special appropriation by the Legislature. The Attorney General has entered into a valid and binding contract with counsel. This motion simply asks this Court enforce that agreement.

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6 Although the Attorney General also asserted claims under the Mississippi Anti-Trust Act, Miss. Code § 75-21, those claims were narrowed considerably by this Court's rulings and the State itself had a relatively small claim for its own purchases of Microsoft products. Thus, at the time of settlement, the MCPA claims were by far the most significant.

7 *See* Miss. Code § 75-24-19(1)(b) (emphasis added):

> . . . One-half (1/2) of said penalty shall be payable to the Office of Consumer Protection to be deposited into the Attorney General's special fund. All monies collected under this section shall be used by the Attorney General for consumer fraud education and investigative and enforcement operations of the Office of Consumer Protection. The other one-half (1/2) shall be payable to the General Fund of the State of Mississippi. **The Attorney General may also recover, in addition to any other relief that may be provided in this section, investigative costs and a reasonable attorney's fee.**

The Mississippi Code grants the Attorney General plenary authority to hire and pay counsel contingent fees. Two code sections are especially important. First, Miss. Code § 7-5-5 empowers the Attorney General to retain special assistant attorneys general and establishes the Attorney General as the sole judge of compensation for special assistants:

> [T]he attorney general is further expressly authorized, empowered, and directed to employ such additional counsel as special assistant attorneys general as may be necessary or advisable, on a fee or contract basis; **and the attorney general shall be the sole judge of the compensation in such cases.**

Miss. Code § 7-5-5 (emphasis added).

Second, Mississippi Code § 7-5-7 expressly empowers the Attorney General to retain special assistants on a fee or salary basis, without any limitation on the nature of the fee agreement and without requiring any approval by the Legislature:

> The attorney general is hereby authorized and empowered to appoint and employ special counsel, on a fee or salary basis, to assist the attorney general in the preparation for, prosecution, or defense of any litigation in the state or federal courts . . .

The same statute further authorizes the Attorney General to enter agreements with lawyers, such as the Retention Agreement, and to pay counsel reasonable compensation without any mention of legislative involvement or approval:

> The attorney general may designate such special counsel as special assistant attorney general, **and may pay such special counsel reasonable compensation to be agreed upon by the attorney general and such special counsel**, in no event to exceed recognized bar rates for similar services.

Miss. Code § 7-5-7 (emphasis added).[8] In this case, of course, the Retention Agreement specifically designated private counsel as "Special Assistant Attorneys General."

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[8] The statute also provides that the Attorney General may pay such special counsel travel other expenses in the same manner and amount as authorized for state employees and officials. *See* Miss. Code. § 7-5-7.

The Mississippi Supreme Court, in an opinion approving a contingent fee agreement signed by the Attorney General, held that § 7-5-7 "places no restrictions upon the type of fee the attorney general can negotiate, even though the Legislature could have restricted the use of contingency fees if it so desired." *Pursue Energy Corp. Miss. State Tax Comm.*, 816 So.2d 385, 391 (Miss. 2002). In other words, the Attorney General has the statutory power to enter into contingent fee arrangement like the Retention Agreement, provided the compensation does not exceed the recognized bar rates. The Mississippi Code provides the Legislature no voice in who the attorney general hires as special counsel or the terms upon which the Attorney General retains and pays such special counsel.

Ignoring the plain text of the statutes, the Auditor's position hinges entirely on the last sentence of § 7-5-7, which identifies two ways in which special counsel shall be compensated:

> The compensation of appointees and employees made hereunder shall be paid out of the attorney general's contingent fund, or out of any other funds appropriated to the attorney general's office.

In his June letter, the Auditor argues that the last sentence of § 7-5-7 requires that payment of the fee in this case requires a special application and legislative appropriation. This interpretation is incorrect for several reasons. First, the Auditor's position ignores the plain language of § 7-5-7, discussed above. The statute makes no requirement of a special application to the Legislature, but instead empowers the Attorney General to use any funds appropriated to his office. Hence, the Auditor's statement in his letter that counsel must "make an application to the Legislature for approval of fees" is not supported by the statute.

Second, the statute permits the Attorney General to pay counsel from his contingent fund. The Auditor fails to acknowledge this language in the statute. Failing to acknowledge that the Attorney General can pay counsel from his contingent fund – a statement in the very same

sentence as the reference to legislative appropriation – shows that the Auditor's interpretation is an incomplete and incorrect reading of § 7-5-7.

Third, § 7-5-7 adds to the Attorney General's common law authority and powers; it is not a limiting statute. The statute expands the powers of the office and does not use language of exclusion or limitation. Nor does the statute purport to limit the common law powers of the Attorney General in any way. The statute certainly does not say the Attorney General cannot pay contingent fees out of settlement recoveries. Yet the Auditor interprets that last sentence as limiting the Attorney General's powers, not adding to them. This interpretation cannot be correct because the Legislature cannot limit the Attorney General's constitutional common law powers. *See Dunn Const. Co. v. Craig,* 2 So.2d 166, 175 (Miss. 1941) (Anderson, J. concurring).

Fourth, the Attorney General's "contingent fund" is not a specialized term nor is it defined anywhere in the Mississippi Code. But it is clear from the Code that the Attorney General's "contingent fund" is different from legislatively appropriated funds. Section 7-5-61 requires the Attorney General to keep books "showing all receipts and disbursement of funds received by the office from whatever source, including *appropriations by the legislature*, the *contingent fund*, and other funds." (emphasis added). This language leaves no doubt that "appropriations by the legislature" is one category and the "contingent fund" is another. Thus, pursuant to §7-5-7, the Attorney General is empowered to pay counsel the fees owed under the Retention Agreement by treating the money held in trust for counsel by Susman Godfrey as his contingent fund.

The Auditor's reference to Mississippi Supreme Court precedent apparently refers to the *Pursue Energy* case, *supra*, but that case has one fundamental difference that makes the Auditor's reliance improper. In *Pursue Energy*, the Attorney General and his retained lawyer

had expressly agreed that the lawyer would not be paid out of disputed tax money collected, but would only be paid by making an application to the Legislature for an appropriation. *See* 816 So.2d at 387 ("[I]t was contemplated that if recovery was had, the Attorney General would apply to the Legislature for an appropriation to pay the firm an amount to be measured by the terms of the retention agreement."). Not surprisingly, the Supreme Court enforced that contract as written.

The Retention Agreement in this case contains no such requirement, and §§ 7-5-5 and 7-5-7 do not require any such provision. Rather, §§ 7-5-5 and 7-5-7 permit the Attorney General to enter any fee agreement the Attorney General deems acceptable, and makes the Attorney General the sole judge of compensation. Hence, *Pursue Energy* is not instructive on whether a legislative appropriation is required in this case, where the Retention Agreement does not contemplate, much less require, a legislative appropriation.

Not only is the Auditor's position inconsistent with the Mississippi Code, but it invades the Attorney General's constitutional authority. The Attorney General's office was created by Article 6, Section 173 of the Mississippi Constitution. The Mississippi Supreme Court confirmed long ago that "the creation of the office of Attorney General by the constitution vested him with these common law duties, which he had previously exercised as chief law officer of the realm." *Kennington-Saenger Theaters v. State ex rel. Dist. Atty.*, 18 So.2d 483, 486 (Miss. 1944). The Mississippi Code expressly recognizes that "the Attorney General shall have the powers of the Attorney General at common law." Miss. Code § 7-5-1. The common law powers of the Attorney General include the power to hire and pay contingent fee counsel.

Because the common law powers of the attorney general are based in the Mississippi Constitution, those powers cannot be restricted by act of the Legislature. "It will be observed

that the Constitution prescribed the qualifications of the Attorney General but not his duties and powers. The office of Attorney-General was a common-law office. The creation of the office therefore by the Constitution without prescribing his powers, by implication adopted his common-law powers, none of which can be taken away from him by the legislature." *Dunn Const., supra,* 2 So.2d at 175.

5.

The Monies in Question Were Never State Funds, Thus Outside the Scope of the Auditor's Control.

The Auditors' contention that the attorneys' fees are public funds is fundamentally flawed. By statutory definition, "public funds" are those "which are received, collected by, or available for the support of or expenditure by any state department, institution or agency . . ." Miss. Code Ann. §7-7-1 (1972 , as amended). By the aforementioned equitable assignment given to the private counsel when the State executed the contingency fee agreement, these funds never were property of the State. Several courts have adopted this position dealing with the exact same circumstances as the case at bar.

In *People v. Philip Morris,* 759 N.E.2d 906 (Ill. 2001), the Illinois Attorney General retained private attorneys on a contingency fee basis to file a civil lawsuit against tobacco companies. The Attorney General challenged the private counsel's attempt to enforce their attorneys' fee lien, contending that enforcement of the lien would force Illinois to pay state funds without legislative appropriation. The Illinois Supreme Court found that the "state is not appropriating any money whatsoever. The tobacco defendants, and not the state, will pay the attorney fees." The funds, "which have never been in the state's hands, are not 'state funds' until after attorney fees are paid and the funds go into the state treasury." *Phillip Morris* 759 N.E.2d at 913-4.

The Minnesota Court of Appeals reached a similar conclusion in *Conant v. Robins, Kaplan, Miller & Ciresi, L.L.P.* 603 N.W.2d 143 (Minn. Ct. App. 1999), where the State hired private attorneys to prosecute the state's claims against various tobacco companies. After settlement of the case, a taxpayer and a state senator challenged the direct payment of counsel fees by tobacco defendants, claiming the fees constituted public funds and were subject to legislative appropriation. *Id.* at 147. Basing its decision on the principle of equitable liens, the Minnesota Court of Appeals held that the taxpayer and state senator did not have standing to challenge the direct attorney fee payment "because the challenged moneys are not state funds..." *Id.* at 147, 149.

In *Philip Morris, Inc. v. Glendening,* 709 A.2d 1230 (Md. Ct. App. 1998) the issue before the Maryland court was the legality of a contingency fee contract executed by Maryland's Attorney General with outside legal counsel for the purpose of representing the state in tort litigation against various tobacco companies. The tobacco companies argued that the underlying litigation sought reimbursement for the expenditure of "public funds," any recovery would thus constitute "state funds" and, an expenditures of public funds needed legislature approval. *Id.* at 709. The Maryland Court of Appeals held that the state's contingency fee contract with special counsel was valid and that the fees payable under the contract did not constitute public funds. The court specifically stated:

> " the gross recovery from the tobacco litigation is not 'State' or 'public' money subject to legislative appropriation until the State has fulfilled its obligation under the Contract, collected the recovery, net of the contingency fee and litigation, expenses, and deposited the funds into the State Treasury."

Glendening, 709 A.2d at 1241.

There is simply no authority for the proposition that if the Attorney General has the ability to contract with private attorneys on a contingency fee basis, then those legal fees are

property of the State , i.e., "public funds" and must be appropriated by the Legislature. The Attorney General entered into a legal contract with the private attorneys to represent the State in this matter. Under the Settlement Agreement, the attorneys' fees unquestionably did not originate from the State treasury, but from Defendant Microsoft, a private party.

The Auditor's argument challenges the actual concept of a contingency fee agreement. If the auditors' argument is correct, then every single legal contingency fee would be property of the client and, thus, would have to be paid directly to the client, before any attorneys' fees or expenses are paid. The agreement in question operates as every other contingency fee agreement, and, therefore, the monies in question are not "public funds" and are outside the scope of the Auditors' authority.

6.

The Auditor's Quasi-Objection Violates the Rules of Professional Conduct and the Separation of Powers

The Auditor's position that the attorney fees are actually property of the State and must be appropriated by the State Legislature also violates the Mississippi Rules of Professional Conduct and the separation of powers doctrine. It has long been established that Section 144 of the Mississippi Constitution enables the Judiciary to establish its own rules for practice and procedure. *See, e.g., Hall v. State,* 539 So.2d 1338, 1345 (Miss. 1989) (citing *Southern Pacific Lumber Co. v. Reynolds,* 206 So.2d 334, 335 (Miss. 1968)). The Mississippi Supreme Court, with its knowledge of the law and actual courtroom experience, are better stewards than the Legislature to maintain the Judiciary's constitutional purpose. *See Newell v. State,* 308 So.2d 71, 76 (Miss.1975). Any statutes that conflict with the rules adopted by the Mississippi Supreme Court are void. *See Stevens v. Lake,* 615 So.2d 1177, 1183 (Miss.1993); *Haralson v. State,* 308 So.2d 222 (Miss. 1975) (holding invalid a statute requiring ten days notice to a court reporter in

order to perfect an appeal); *Scott v. State,* 310 So.2d 703 (Miss.1975) (upholding rule requiring pre-filing of proposed jury instructions); *Jackson v. State,* 337 So.2d 1242, 1253-57 (Miss.1976) ("amending" statutory procedure for sentencing phase of capital murder trials). In particular, the Rules of Discipline "are an integral part of the functioning of the judicial branch and thus not properly subject to the 'legislative power' vested in Section 33." *Hall v. Mississippi Bar*, 631 So.2d 120, 123 (1993).

In adopting the Rules of Professional Conduct, the Mississippi Supreme Court established two circumstances in which a lawyer may gain a proprietary interest in a client's cause of action: (1) he may acquire a lien to secure fees or expenses, and (2) he may contract for a contingency fee in a civil action. See *The Mississippi Bar v. Mathis,* 620 So.2d 1213 (Miss.1993.); MISS. R. PROF. COND. 1.8(j).

In the recent case of *Wimley v. Reid*, 991 So.2d 135 (Miss. 2008), the Mississippi Supreme Court applied separation of powers principles to limit the power of the Legislature to modify Judicial Branch rules, such as the Rules of Professional Conduct. In *Wimley,* the plaintiff failed to file a statutorily required certificate of consultation or disclosure of expert information with a medical malpractice complaint. *Id.* at 136. Shortly after initiating suit, the plaintiff sought to cure the deficiency by filing a motion to amend to include the certificate. *Id.* The defendant successfully moved to dismiss the action for failing to comply with Miss.Code. § 11-1-58. *Id.* On appeal, the Supreme Court addressed the constitutionality of the procedural rule set forth in § 11-1-58.

The Court ruled, based on the doctrine of separation of powers, that only the Court itself, and not the Legislature, possessed the power to promulgate rules of procedure. *Id.* at 138 (quoting *Newell v. State*, 308 So. 2d 71, 76 (Miss. 1975)). The Legislature is prohibited from

promulgating procedural statutes which conflict with the rules adopted by the judiciary. *Id.* The Supreme Court found that the requirement of strict compliance -- that a certificate of consultation must accompany the complaint in a medical malpractice lawsuit -- was such an unconstitutional procedural statute. *Id.*

Under the doctrine of *Wimley*, the Auditor's interpretation of § 7-5-7 must fail because it conflicts with Mississippi Rule of Professional Conduct 1.8. Once the Legislature authorized the Attorney General to hire attorneys under contingency fee contracts, the Rules of Professional Conduct become applicable. The Rules govern attorneys' representation, including such matters as the regulating the safekeeping of property and reasonableness of attorneys' fees under a contingency fee contract. As noted above, Rule 1.8(j) expressly allows an attorney to gain a proprietary interest in a contingency fee action. If the Legislature cannot create an exception to the "notice pleading" requirement of the Mississippi Rules of Civil Procedure, as *Wimley* held, then it equally cannot carve out an exception to Rule 1.8(j) which entitles an attorney to assert a proprietary interest in a contingent fee action.[9]

Although the Legislature might pass a law that requires the Attorney General to comply with some pre-suit procedure, only the Judiciary can create an exception to when an attorney may gain a proprietary interest in a contingency fee case. The Judiciary has not done so here.

The attorneys in this action entered into a valid contingency fee agreement with the State of Mississippi. Upon filing suit, the attorneys gained a proprietary interest that vested upon the

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[9] Moreover, denying the attorneys access to fees to which they are entitled pursuant to Rule 1.8(j) and the Retention Agreement, constitutes a "taking" of the attorneys' interest in violation of the Mississippi Constitution, Art. 3, Sec.17. A future interest in property is subject to recompense in an eminent domain taking. *See Hemphill v. Mississippi State Highway Comm'n,* 245 Miss. 33, 50, 145 So.2d 455, 463 (1962).

settlement of the action. This Court should uphold the Rules of Professional Conduct by recognizing and protecting the attorneys' interest.

CONCLUSION

The Order approving the settlement set time periods for objection and appeal before any funds were paid by Microsoft. Despite that schedule, established by this Court, the Auditor never filed an objection. Even if the Auditor were deemed not to have waived any objection by this procedural default, Plaintiff's counsel brings this petition to resolve any issue raised by the Auditor's letter to Mr. Hazzard. These matters can be properly resolved by this Court pursuant to its exclusive jurisdiction over the Microsoft settlement.

The Attorney General was fully empowered to retain counsel on the terms of the Retention Agreement. The terms of the Retention Agreement and the requested payment of fees and expenses to counsel are fair and reasonable, particularly in light of the outstanding result achieved. The Auditor's quasi-objection should be disregarded because it attempts to regulate attorneys' fees and expenses, which were never public funds, and the particular circumstances of the Settlement terms here, as to which statutory authority exists for direct payment of counsel fees.

Plaintiff's counsel also request that the Court issue an order directing Susman Godfrey to distribute to each of the law firms that represented Plaintiff its appropriate share of fees and expenses, with each such firm to hold the funds in trust pending final resolution of this petition. Also, Plaintiff's counsel prays for any other general relief this Court sees appropriate.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this day delivered, a true and correct copy of the attached and foregoing document to the following persons:

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Courtesy copy to:

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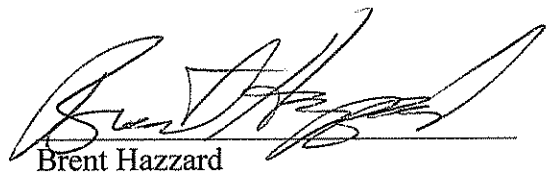
This the 11th day of January, 2010.



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