

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA**

MICHAEL KERNEN, on behalf of )  
himself and all others similarly situated, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
CASILLAS OPERATING, LLC, )  
 )  
Defendant. )

Case No. CIV-18-00107-JD

**DECLARATION OF MEDIATOR BRADLEY A. GUNGOLL**

I, BRADLEY A. GUNGOLL, upon personal knowledge and pursuant to 28 U.S.C. § 1746, declare as follows:

1. I was selected by the parties to mediate the above-entitled action and did so as an independent mediator. The mediation resulted in a settlement.
2. While the mediation process is confidential, the parties have authorized me to inform the Court of the matters set forth below, to be used in support of Plaintiff's Motion for Final Approval of Class Settlement.
3. My statements and those of the parties during the mediation are subject to a confidentiality agreement, and I do not intend to waive that agreement. I make this Declaration based on personal knowledge and am competent to so testify.

**QUALIFICATIONS**

4. I am a founding shareholder of Gungoll, Jackson, Box & Devoll, P.C. I practice litigation in all jurisdictions, state and federal. My peers have recognized me as

a fellow in the American College of Trial Lawyers. I practice primarily in the areas of energy and natural resources law, environmental law, personal injury and product liability. I further serve regularly as a mediator with Dispute Resolution Consultants and also serve as an Arbitrator. I frequently mediate cases involving energy law, contract law, insurance law and property issues.

5. A true and correct copy of my curriculum vitae is attached hereto as Exhibit 1.

6. As explained herein, based on my experience as a mediator and arbitrator, it is my opinion that the Settlement in this case is fair, reasonable, and adequate.

**THE SETTLEMENT PROCESS WAS  
THOROUGH, FAIR, AND ARM'S-LENGTH**

7. Before the mediation, the parties provided to me and exchanged with each other extensive, confidential legal briefing regarding class certification, merits and damages issues supported by evidence and expert opinions. Based on these submissions and discussions during the mediation, I concluded that Class Counsel had performed a thorough examination of the factual discovery and payment data and, with the aid of experts, analyzed it to determine appropriate case valuations. Class Counsel was current and well informed on the law and provided legal research and analysis of Oklahoma law, federal law, and the law of other states. And, Defendant was cooperative in producing massive amounts of confidential information to enable Class Counsel to assess the case, and counsel for Defendant had performed considerable work in preparation for the mediation.

8. The mediation occurred via Zoom meeting on October 14, 2020. All participants attended remotely via Zoom and included: Plaintiff's counsel, Drew Pate, Patranell Lewis, Emily Kitch, Patrick Ryan, Jason Ryan, Paula Jantzen and Michael Burrage; Defendant through its counsel, Kevin Hayes and Pamela Anderson. Plaintiff and Class Representative, Michael Kernen, was available by phone.

9. At the beginning of the mediation session, I asked detailed questions of both sides to expose their strengths and weaknesses, as well as to clarify where substantial disputes on class certification, liability, damages, and certain defenses still existed. The parties were cooperative and professional throughout this process.

10. The parties were able to reach an agreement in principle to resolve this matter at the conclusion of the all-day remote mediation on October 14.

11. After presiding over the mediation process in this case, I am convinced that the parties' settlement is the product of vigorous and independent advocacy and arm's-length negotiations conducted in good faith. There was no collusion between the parties.

**THE \$2.7 MILLION SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE**

12. The parties exchanged massive amounts of data for experts to analyze. However, considerable differences continued to exist between the parties on liability, damages, and statute of limitations.

13. For example, the parties presented opposing, good faith arguments as to Casillas Operating's duty, under Oklahoma oil and gas law, to pay statutory interest on

certain types of payments.

14. Prior to the Settlement, there were numerous pending litigation issues, including substantial outstanding discovery disputes, that would have long delayed the resolution of the case. And, the dispute settled prior to class certification, which can often be a substantial hurdle for plaintiffs. Further, following certification, Class Representative and Class Counsel would still have been required to file, respond to, and win motions for summary judgment and ultimately succeed at trial – all for an unknowable amount of money, if any, to be awarded by an unknown jury.

15. Throughout the mediation process, I developed an understanding of the dispute, the respective positions of the parties, and the relative strengths and weaknesses of those positions, as well as the risks, rewards, and costs of continued litigation and inevitable appeal.

16. Based on my knowledge of the issues in dispute, my review of the substantial factual and legal materials presented before and at the mediation, the rigor of the negotiations, the relative strengths and weaknesses of the parties' positions, and the benefits achieved in the Settlement, I believe that the terms of the \$2.7 million settlement are fair, adequate, reasonable and in the best interests of the Class. This is an outstanding result for the Class.

17. It is apparent from the submissions and presentations made by Class Counsel before and during the mediation session, as well as from my numerous discussions with them, that Class Counsel performed a thorough examination of the documents and data produced in this litigation. It is also my opinion that Class Counsel



performed substantial work and effort in preparing their case for mediation and in presenting their claims in such a way to produce a valuable settlement for the Class.

I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct.

FURTHER AFFIANT SAYETH NOT.

Dated this 14<sup>th</sup> day of October 2021.

  
\_\_\_\_\_  
Bradley A. Gungoll, Mediator

# **EXHIBIT 1**

ENID

Post Office Box 1549  
Enid, OK 73702

Street Address  
323 West Broadway  
Enid, OK 73701

Tel 580.234.0436  
Fax 580.233.1284



**GUNGOLL JACKSON**  
GUNGOLL JACKSON BOX & DEVOLL, P.C.  
ATTORNEYS & COUNSELORS AT LAW

OKLAHOMA CITY

101 Park Avenue  
Suite 1400  
Oklahoma City, OK 73102

Tel 405.272.4710  
Fax 405.272.5141

Bradley A. Gungoll is a founding shareholder of Gungoll, Jackson, Box & Devoll, P.C. He practices litigation in all jurisdictions, state and federal. His peers have recognized him as a fellow in the American College of Trial Lawyers.

Gungoll practices primarily in the areas of energy and natural resources law, environmental law, personal injury and product liability. He further serves regularly as a mediator with Dispute Resolution Consultants and also serves as an Arbitrator. Regular Mediation disputes include Energy law, Contract law, Insurance law and Property issues.

Gungoll is a fellow of the Oklahoma Bar Foundation and past chairman of the Mineral Law section of the Oklahoma Bar Association. He has served as President and as a member of the Board of Directors of the Oklahoma Association for Justice formerly the Oklahoma Trial Lawyers Association. He is past Chair of the Energy and Natural Resources Section of the Oklahoma Bar Association and has been a member of the Access to Justice Committee of the State Bar. Gungoll further serves on the Alternative Dispute Resolution Committee for the American College of Trial lawyers and the Oklahoma Bar Association. Gungoll has served as President of the Garfield County Bar and currently serves the Oklahoma County Bar on the Fee and Grievance Committee.

**Areas of Practice:**

- Civil and Commercial Litigation • Energy and Natural Resources • Mediation and Arbitration • Environmental Law

**Education:**

- Oklahoma State University, B.S., 1975  
American University, International School of Law; Oklahoma City University, J.D., 1979

**Court Admissions:**

- United States Supreme Court
- United States Court of Appeals, Tenth Circuit

- United States District Court Western District of Oklahoma
- United States District Court Northern District of Oklahoma
- United States District Court Eastern District of Oklahoma

**Other Affiliations:**

- American Bar Association
- American Association for Justice
- Oklahoma Bar Foundation
- Past Chairman of the Board of the Oklahoma Sports Hall of Fame and the Jim Thorpe Association.
- Past Associate Board of Directors of the National Cowboy and Western Heritage Museum.
- Oklahoma City Mineral Lawyers Society



**Subject:** Activity in Case 5:18-cv-00107-JD Kernen v. Casillas Operating LLC et al Declaration  
**Date:** Wednesday, October 20, 2021 at 6:23:32 PM Central Daylight Time  
**From:** okwd\_ecf\_notice@okwd.uscourts.gov  
**To:** okwdecf@okwd.uscourts.gov

**This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.**

**\*\*\*NOTE TO PUBLIC ACCESS USERS\*\*\*** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.

**U.S. District Court**

**Western District of Oklahoma[LIVE]**

**Notice of Electronic Filing**

The following transaction was entered by Barnes, Robert on 10/20/2021 at 6:23 PM CDT and filed on 10/20/2021

**Case Name:** Kernen v. Casillas Operating LLC et al  
**Case Number:** [5:18-cv-00107-JD](#)  
**Filer:** Michael Kernen  
**Document Number:** [104](#)

**Docket Text:**

**[DECLARATION by Michael Kernen Declaration of Mediator Bradley Gungoll. \(Barnes, Robert\)](#)**

**5:18-cv-00107-JD Notice has been electronically mailed to:**

Andrew G Pate dpate@nixlaw.com, ncameron@nixlaw.com

Bradley E Beckworth bbeckworth@nixlaw.com, sprince@nixlaw.com, swhatley@nixlaw.com, tduck@nixlaw.com

Cody L Hill codyhill@nixlaw.com

Dawson A Brotemarkle dbrotemarkle@hallestill.com, lwest@hallestill.com, sbaccus@hallestill.com

Emily N Kitch ekitch@barneslewis.com

J Kevin Hayes khayes@hallestill.com, ghambrick@hallestill.com, lwest@hallestill.com

Jason A Ryan jryan@ryanwhaley.com, jmickle@ryanwhaley.com, rharrison@ryanwhaley.com

Jeffrey J Angelovich jangelovich@nixlaw.com, codyhill@nixlaw.com, ncameron@nixlaw.com, sprince@nixlaw.com

Lisa P Baldwin lbaldwin@nixlaw.com, ncameron@nixlaw.com, sprince@nixlaw.com

Michael Burrage mburrage@whittenburrage.com, cnorman@whittenburrage.com, docketing@whittenburrage.com

Pamela S Anderson panderson@hallestill.com, lwest@hallestill.com, ssmock@hallestill.com

Patranell Britten Lewis plewis@barneslewis.com, abarnes@barneslewis.com, lbeebe@barneslewis.com, lrosales@barneslewis.com

Patrick M Ryan pryan@ryanwhaley.com, jmickle@ryanwhaley.com

Paula M Jantzen pbuchwald@ryanwhaley.com, jmickle@ryanwhaley.com, mkeplinger@ryanwhaley.com

Robert N Barnes rbarnes@barneslewis.com, abarnes@barneslewis.com, lbeebe@barneslewis.com

Susan R Whatley swhatley@nixlaw.com, sprince@nixlaw.com

Trey N Duck, III tduck@nixlaw.com, sprince@nixlaw.com

**5:18-cv-00107-JD Notice has been delivered by other means to:**

The following document(s) are associated with this transaction:

**Document description:**Main Document

**Original filename:**n/a

**Electronic document Stamp:**

[STAMP dcecfStamp\_ID=1041971380 [Date=10/20/2021] [FileNumber=4623446-0] [1242d10c86e150cafdbdb269f478ac547294a2cad15ba0df4deeffa536b701125a567375a1ab058ef82e634233e41015cd97acbb14716356c3d0bf707edc08ba5]]