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CIRCUIT COURT
FOR BALTIMORE CITY

IN THE CIRCUIT COURT FOR BALTIMORE CITY

ROBERT F. CHERRY, JR., *et al.*,)
)
 Plaintiffs,)
)
 v.)
)
 MAYOR AND CITY COUNCIL)
 OF BALTIMORE CITY,)
)
 Defendant.)
)
)

Civil No. 24-C-16-004670

MEMORANDUM OF LAW
IN SUPPORT OF BALTIMORE FIRE OFFICERS, LOCAL 964, IAFF
APPLICATION FOR AN AWARD OF
ATTORNEYS' FEES

I. INTRODUCTION

Klausner, Kaufman Jensen & Levinson (KKJL) on behalf of Baltimore Fire Officers, Local 964, IAFF respectfully requests an award of attorneys' fees. The request seeks attorneys' fees equal to 3% of the common fund generated by counsel's work in the case on behalf of Local 964, its active and retired members and in support of the work of Class Counsel. In light of the duration, scope, and complexity of this case and applying the various factors that are to be considered with respect to the reasonableness of the award, such as the time litigating at the trial and appellate levels in state and federal courts and the quality and skill of the attorney involved, a fee equal to 3% of the common fund awarded to the class is warranted. Class Counsel has separately filed an application for attorneys' fees and costs. Except as otherwise stated in this application, KKJL and Local 964 adopts the recitations and reasoning in Class Counsel's application as if fully set forth herein.

II. BACKGROUND AND PROCEDURAL HISTORY OF LOCAL 964'S PARTICIPATION

A. History of the Case as to Local 964

Local 964, the union for Baltimore fire personnel holding the ranks of lieutenant, captain and battalion chief retained Robert D. Klausner in July 2010 to advise the union on behalf of both its active and retired members concerning litigation which had been filed in the United States District Court on June 3, 2010 by Baltimore Firefighters Local 734, Fraternal Order of Police Lodge 3 and various named individuals as putative class and sub-class representatives.

Local 964 and its counsel entered into a common interest agreement with Class Counsel in August 2010. Thereafter, Local 964 moved to intervene in the federal proceedings. Judge Garbis deferred ruling on the motion but accorded Local 964 *amicus curiae* status with the right to file pleadings, examine witnesses, present argument on questions of law, and participate in all proceedings before the Court. Judge Garbis ultimately granted intervenor status prior to his final order.

Local 964 participated in all trial proceedings in the U.S. District Court and in the briefing and oral argument in the U.S. Court of Appeals for the Fourth Circuit, and the petition for certiorari in the United States Supreme Court.

Local 964 was an original plaintiff along with the other unions and named individuals in the state court class action filed in August 2016 and participated in all proceedings in the Baltimore City Circuit Court and later in the Maryland Court of Appeals.

B. Background Relating to Local 964's Counsel

Robert Klausner, a member of the state bars of Florida, Texas, and Wisconsin, has been practicing law for 44 years specializing in matters relating to state and local government retirement systems and public employee labor law. Mr. Klausner and KKJL provide legal services to more

than 200 state and local government retirement plans in more than 25 states and territories. Mr. Klausner has litigated pension constitutional questions at all levels of state and federal courts, including proceedings in the high courts of Alaska, Florida, Louisiana, California, Arizona, Texas, Oklahoma, Michigan and Minnesota. In addition, Mr. Klausner has litigated in numerous U.S. District Courts, Courts of Appeal and represented the Kentucky Retirement Systems and, separately, Baltimore County in the Supreme Court of the United States. Mr. Klausner has directly participated in the prosecution of numerous federal securities class actions on behalf of public pension funds at the district court and appeals court levels, as well as providing briefs as *amicus curiae* in securities cases in the United States Supreme Court. Mr. Klausner is the co-author of *State and Local Government Employment Liability* published by Thomson-Reuters-West Publishing and is the author of *State and Local Government Retirement Law: A Guide for Lawyers, Trustees and Plan Administrators* published by Thomson-Reuters-West Publishing. He has also been named to the *Best Lawyers in America* list for over 20 years and is rated “AV-Preeminent” by Martindale-Hubbell for many years.

As a member of the Plaintiffs’ joint litigation team, Mr. Klausner expended 3,142 hours. For the reasons explained throughout this Application, Klausner and KKJL on behalf of Local 964 seek attorneys’ fees calculated to be 3% of the total class award inclusive of post-judgment interest or \$1,058,429.67. As most of the expenses incurred by Local 964 related to out-of-state travel, no reimbursement for expenses is sought.

III. LEGAL STANDARD

Klausner, KKJL and Local 964 adopt the Legal Standard set forth in the application of Class Counsel.

IV. ARGUMENT

Klausner, KKJL and Local 964 adopt the legal argument set forth in the Class Counsel's application together with the following:

A. The Requested Three Percent (3%) Fee Is Reasonable.

1. Klausner and KKJL contributed materially to the result achieved to the benefit of the class as a whole and many retired or retirement eligible members of Local 964 in particular.

2. Klausner, KKJL and Local 964 assisted in the prosecution of this action at every level of state and federal court beginning with the entry of its common interest agreement in August 2010.

3. The Risk of Nonpayment.

Local 964 is the smallest of the labor organizations in this case. Because of Klausner's 40 year relationship as a pension lawyer for the IAFF and its locals throughout the United States, including the then president of Local 964, Stephen Fugate, Local 964 was provided a substantial fee reduction. Klausner provided a reduced fee of \$350 per hour, considerably below the community standard for a practitioner of his experience. It was agreed that if any fee was recovered, Local 964 would first be reimbursed and Klausner would only receive a premium if any fee awarded exceeded the lodestar. At various times during the litigation, Local 964 had a receivable due Klausner in excess of \$100,000. Klausner and Local 964 agreed they would pay what it could afford each month against the hourly receivable, without interest. At present, the receivable is \$48,000. Given the length of time that the case proceeded there was concern whether Local 964, which changed leadership three times, and due to its small size, could keep up with the

litigation costs. At the same time it was paying its own counsel. Local 964 contributed to a portion of the costs advanced by the other unions.

C. *A Lodestar Cross-Check Supports the Requested Fees*

The *Lodestar* cross-check here also suggests that 3% is reasonable. Here, Local 964's Counsel spent 3,142 hours, including litigating the federal and state claims at the trial and appellate levels, for a combined lodestar of \$1,100,000 at the discounted rate which remained static over the course of the litigation. A lodestar cross-check verifies the reasonableness of a 3% award of attorneys' fees in the amount of \$1,058,429.67 as compared to the total damage award plus interest of \$35,280,000. Local 964's counsel has chosen not to seek a higher percentage award, that could be justified by considering the lodestar methodology, because the financial burden of the litigation was ameliorated by the support of the Union. Class Counsel is mindful of the obligations under Rule 1.5 and believes that a 3% award, strikes a fair balance protecting the interests of all Plaintiffs and ensuring that counsel is fairly compensated for the decade of effort expended by Local 964's counsel to the entire Class's benefit.

D. *A Rule 1.5 Cross-Check Also Supports the Requested 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.*

The Court is well familiar with labor and complexity of this litigation, and the novelty of the issues involved in Maryland jurisprudence regarding public employee pension rights. The statements detailed in Class Counsel's application are adopted.

In addition to the factors cited and fully justified by Class Counsel's application, four other factors require comments specific to Local 964.

2. *The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer.*

For a small firm like KKJL, and in particular the fact that its principal undertook this representation at below market rates, the substantial commitment of time expended, at various times precluded Klausner and KKJL from other representation.

3. *The nature and length of the professional relationship with the client.*

Klausner and KKJL have had a professional relationship with the IAFF for more than 40 years. For nearly that entire time, he has had a relationship with the leadership of Local 964 at the inception of the litigation, Captain Stephen Fugate. Klausner attended numerous meetings of Local 964's executive committee and general membership to answer their questions concerning the course of the litigation and posted regular updates on the Local 964 website. Despite several changes in union leadership over the past decade, the relationship with Klausner remained.

4. *The experience, reputation, and ability of the lawyer or lawyers performing the services.*

The skills and experience of Local 964's counsel in the area of state and local government retirement law contributed materially to the success of the litigation and was of substantial assistance to Class Counsel in their efforts for a period of over 10 years.

5. *Whether the fee is fixed or contingent.*

Local 964's Counsel undertook this representation pursuant to a modified contingency fee agreement that would provide a premium over the below-market hourly rates only after Local 964

had recovered the fees paid. Given the contributions to the over-all result, the 3% fee is justified.

IV. CONCLUSION

For the reasons set forth above, Local 964 Counsel respectfully requests an award of attorneys' fees of three percent (3%) of the Common Fund.

Dated: October 1, 2021

Respectfully submitted,

/s/ Dwight W. Stone, III

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*Attorneys for Plaintiff Baltimore Fire Officers,
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Firefighters*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 1st day of October, 2021, a copy of the foregoing Memorandum of Law in Support of Application for an Award of Attorneys' Fees and Expenses for Class Counsel is being served via electronic mail on:

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Firefighters IAFF, Local 734

IN THE CIRCUIT COURT FOR BALTIMORE CITY

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| Plaintiffs, |) | |
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| |) | |
| MAYOR AND CITY COUNCIL |) | |
| OF BALTIMORE CITY, |) | |
| |) | |
| Defendant. |) | |
| |) | |
| |) | |

AFFIDAVIT OF LOCAL 964 COUNSEL ROBERT D. KLAUSNER IN SUPPORT OF APPLICATION FOR ATTORNEY’S FEES

I, ROBERT D. KLAUSNER, am over the age of eighteen and competent to testify and state as follows:

1. I am the principal of Klausner Kaufman Jensen & Levinson (KKJL), a partnership of professional associations. I received a J.D. from the University of Florida College of Law in 1977. I received my B.A. from the University of Florida in 1974. I am admitted to the state bars of Florida, Texas, and Wisconsin and am a member of the bars of the United States Supreme Court and the First, Second, Third, Fourth, Fifth, Sixth, Eighth, Tenth and Eleventh Circuit Courts of Appeal.

2. I have litigated pension constitutional questions at all levels of state and federal courts, including proceedings in the high courts of Alaska, Florida, Louisiana, California, Arizona, Texas, Oklahoma, Michigan and Minnesota. In addition, I have litigated in numerous U.S. District Courts, Courts of Appeal and represented the Kentucky Retirement Systems and Baltimore

County in the Supreme Court of the United States. I have directly participated in the prosecution of numerous federal securities class actions on behalf of public pension funds at the district court and appeals court levels, as well as providing briefs as *amicus curiae* in securities cases in the United States Supreme Court. I am the co-author of *State and Local Government Employment Liability* published by Thomson-Reuters-West Publishing and the author of *State and Local Government Retirement Law: A Guide for Lawyers, Trustees and Plan Administrators* published by Thomson-Reuters-West Publishing . I have been named to the *Best Lawyers in America* list for over 20 years and I have been rated AV-Preeminent by Martindale-Hubbell for many years.

3. In the present case, I was attended and actively participated in all proceedings after being retained by Local 964 in 2010.

4. The complexity and volume of pleadings in both state and federal court demonstrates that my legal services contributed to the efforts of the class as a whole, including Local 964 and its members for over 10 years. I took an active role in drafting all pleadings, briefs and petitions, bringing to the litigation my more than four decades of state and local government pension law experience.

5. In the course of my representation, I expended 3142 hours at a substantially reduced rate of \$350 per hour, which remained unchanged through the duration of the litigation.

6. I had a modified fee agreement in which Local 964 would be billed at the reduced rate and they would pay monthly what was within their ability to pay. At times the receivable exceeded \$100,000 and no interest was charged on the fees owed. Under the agreement,

Local 964 would be reimbursed for fees paid up to the amount of the lodestar and any excess would be paid to me.

7. Based on the percentage fee requested, if 3% is approved, Local 964 will recover essentially the entire amount it has paid to date, less the \$48,000 receivable still due and owing.

Dated: October 1, 2021



ROBERT D. KLAUSMER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 1st day of October, 2021, a copy of the foregoing Affidavit of Local 964 Counsel Robert D. Klausner in Support of Application for Attorney's Fees is being served via electronic mail on:

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