

Lodestars and Multipliers

December 2014

By: [James C. Milton](#)

Those who watch the Oklahoma Supreme Court were in for a treat on Tuesday, when the Court announced its decision in *Hess v. Volkswagen of America*. In *Hess*, the Court interpreted relatively new legislation on class action attorney fees, in a case argued by preeminent Oklahoma plaintiff, defense, and appellate lawyers and involving significant sums of money.

The plaintiffs sued Volkswagen in 2005 over a front spoiler design. The lawsuit was certified as a class action in Oklahoma. A similar lawsuit was certified as a class action in Ohio. Volkswagen avoided class certification of yet another, similar lawsuit in Florida. The dispute was settled in Oklahoma. The settlement applied nationwide.

The plaintiffs requested \$15 million in attorney fees, expenses, and class representative incentives. The award of attorney fees and expenses was governed by Section 2023(G)(4)(e) of the Oklahoma Pleading Code. This provision was first added in 2009, then amended in 2011 and 2013. The Section 2023(G)(4)(e) standards are also found in Rule 1.5(a) of the Oklahoma Rules of Professional Conduct and in *Burk v. Oklahoma City*.

These standards require calculation of attorney fees using the "lodestar" method - multiplying the number of hours by the attorneys' hourly rates. The trial court may apply a multiplier to enhance or diminish the award of attorney fees.

In *Hess*, the trial court calculated the lodestar to be \$3,800,757.00, but then applied a reduction of 5% based on the inclusion of attorney time related to the failed Florida litigation. Volkswagen objected, arguing that the attorney time related to Florida litigation should be excluded altogether from lodestar. The Oklahoma Supreme Court agreed with Volkswagen, pointing out that the plaintiffs in *Hess* argued against applying the Florida decertification ruling to the Oklahoma class certification issue.

After initially applying the 5% reduction to the lodestar, the trial court changed its ruling and increased the lodestar using a multiplier of 1.9 - which would result in a 90% increase. The Oklahoma Supreme Court disagreed, pointing to the relatively low recovery by the class members. "History has shown that only 310 valid claims have been filed and there has been a pay-out for damages for the minimal amount of \$45,780. No payments went to Oklahoma residents."

Although the Supreme Court did not suggest a particular result on remand, it reminded the trial court that "multipliers may adjust a lodestar upwards or may diminish the award."

Attorneys

- James C. Milton