

IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

DEBBIE BARRETT, INDIVIDUALLY)
AND ON BEHALF OF THOSE)
SIMILARLY SITUATED,)

Plaintiff)

VS.)

HEWLETT-PACKARD COMPANY,)

Defendant)

STEPHEN GRIDER and BEVERLY L.)
GRIDER, INDIVIDUALLY AND ON)
BEHALF OF THOSE SIMILARLY)
SITUATED,)

Plaintiffs,)

vs.)

COMPAQ COMPUTER CORPORATION,)

Defendant.)

Case No. CJ-2003-967 L
(surviving number)

STATE OF OKLAHOMA }
CLEVELAND COUNTY } S.S.

FILED In The
Office of the Court Clerk

MAY - 9 2008

DOCKET _____ PAGE _____ RECORDED
Rhonda Hall, Court Clerk
_____ DEPUTY

**ORDER GRANTING FINAL APPROVAL TO
CLASS ACTION SETTLEMENT AND FINAL JUDGMENT**

On December 11, 2007, this Court granted preliminary approval to the proposed class action settlement set forth in the Settlement Agreement.¹ The Court also provisionally certified a nationwide class for settlement purposes (the Compaq Settlement Class and the HP Settlement Class (collectively referred to as the "Class")), approved the procedure for giving notice to the members of the Class and set a final fairness hearing to take place on April 29, 2008. The Court

¹ Unless otherwise defined, capitalized terms in this Order have the definitions found in the Settlement Agreement.

finds that the Notice substantially in the form approved by the Court in its preliminary approval order was given in the manner ordered by the Court

On April 29, 2008, the Court held a duly noticed final fairness hearing to consider: (1) whether the terms and conditions of the Settlement Agreement are fair, reasonable and adequate; (2) whether a judgment should be entered dismissing the named plaintiffs' complaints on the merits and with prejudice in favor of the Defendants and against all persons or entities who are Class members herein who have not requested exclusion from the Class; and (3) whether and in what amount to award counsel for the Class as attorneys' fees and expenses and whether and in what amount to award payments to the class representatives.

FINDINGS OF THE COURT:

1. Pursuant to the Settlement Agreement filed December 11, 2007, the following constitutes this Court's Supplemental Findings and Orders related to the Order Finally Approving Settlement Agreement and Final Judgment, which is being executed in the above styled matter.
2. Nothing in these findings of fact modifies the Settlement Agreement, which is approved and incorporated herein by reference. The findings stated herein are clarified by the terms of the Settlement Agreement and when any description herein of the terms of the Settlement Agreement is incomplete or conflicts with the terms of the Settlement Agreement, the terms of the Settlement Agreement shall control.
3. All capitalized terms used in these findings that are not otherwise defined in these findings shall have the meaning as defined in the Settlement Agreement.
4. In making its determination that the Settlement Agreement is fair, reasonable and adequate, this Court considered all objections presented to the Court.
5. In the Settlement Agreement Settling Defendants agree to pay without objection attorneys' fees of \$40 million (\$40,000,000.00). This payment is independent of the remedies available to the class.

- a. A fee was recoverable as part of a litigated judgment under either fee shifting statutes or common fund.
- b. The Class Counsel provided the Court, in camera, with detailed time records which satisfy the requirements of *Burk v. Oklahoma City*, 1979 OK 115, 598 P.2d 659 (1979); and *Spencer v. Okla. Gas & Elec. Co.*, 2007 OK 76, 171 P.3d 890 (2007).
- c. The Court reviewed these detailed time records.
- d. The fee of \$40 million is reasonable under the lodestar analysis.
- e. The base lodestar based on the standards announced in *Burk* and *Spencer* is \$32,540,000.00. *Burk v. Oklahoma City*, 1979 OK 115, 598 P.2d 659 (1979); and *Spencer v. Okla. Gas & Elec. Co.*, 2007 OK 76, 171 P.3d 890 (2007). The following non-exclusive clarifications in the remainder of this paragraph do not limit this general finding. Attached to the fee application are summary sheets that show the hours and rates for each lawyer, legal assistant and other biller whose total time makes up the lodestar. The rates were supported by affidavits and expert opinions in the record. The hours were confirmed by the in camera review of the detailed time records. The hours expended by each particular biller and all billers combined were justified. The hours expended by and the hourly rates for each particular biller and all billers combined are reasonable. The hourly rates for each particular biller and all billers combined are the market rate for these services.
- f. The Court applies the *Burk* factors as follows.
 - i. Time and labor required. Prosecution of this case involved in excess of 70,000 hours of billable time by 58 lawyers, 27 legal assistants, and others. There were about 4 million (4,000,000) paper documents produced, 300 thousand (300,000) electronic documents produced, 122 depositions, 78 different experts, 10 formal FRCP 34(a) – type inspections resulting in over 600 hours of video inspection tape, 1,229 pleadings, 376 orders, 100 hearings, and 88 appellate briefs.
 - ii. The novelty and difficulty of the questions: The novel and difficult legal questions involved included certification of national classes and consequential questions of interstate comity, choice of law, whether malfunction is an element of a breach of an express warranty, proof of reliance in a class action, proof of notice in a class action, application of limitation of remedies contained in consumer product warranties, and other issues identified in the record. The number of pleadings, hearings, orders, and appellate proceedings attest to this. The novel and difficult legal questions of fact include understanding of computer and chip architecture, methods of detecting and demonstrating the alleged defect and its consequences and software patches and their limitations. This is