IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

GIRSCH, *et al.*	)	
	)	
Intervening-Plaintiffs,	)	Case No. 01 CH 21984
v.	)	
	)	Hon. Neil H. Cohen
DENNIS J. HIFFMAN, *et al.*	)	Calendar 5
	)	
Defendants.	)	

HCH'S MOTION TO RECONSIDER JULY 30, 2020 FEE PETITION RULING

Defendants ("HCH") move for reconsideration[1] of the Court's July 30, 2020 ruling (Ex. 1[2], the "Order") on The Law Office of Edward T. Joyce, P.C.'s ("Petitioning Counsel") Amended Petition for Attorney's Fees ("Fee Petition") and state:

The Court awarded Petitioning Counsel **$2,361.32** for every hour of work claimed, which is unreasonable as a matter of law. This hourly rate will rise to **$2,535.94** if the Court comes to the **$15,975,157.60** award suggested by HCH in its response to Petitioning Counsel's pending motion to reconsider, or, **$2,615.31** based on the **$16,475,157.60** sought by Petitioning Counsel through its motion. More particularly, the Order reflects the following legal errors by the Court:[3] (1) it mistakenly refused to apply the lodestar method, even as a cross-check, despite the unanimous conclusion of all interested parties, including Petitioning Counsel and other attorneys petitioning for fees in this case (Judge Sherlock and Mr. Carey) that the lodestar must be applied at least as a cross-check; (2) it mistakenly placed the burden of proof on HCH instead of Petitioning

[1]HCH reserve all rights to contest and/or appeal issues not addressed herein.

[2]All lettered exhibits hereto are those to HCH's response or sur-response to the Fee Petition.

[3]This is one basis for a motion to reconsider. *Gen. Motors Accept. Corp. v. Stoval*, 374 Ill. App. 3d 1064, 1078 (1st Dist. 2007). However, the Court's Order is at this time interlocutory and therefore can be vacated or modified any time before final judgment for any reason. There is no final judgment here. *See, e.g.*, *Barry v. Chade Fashions, Inc.*, 383 Ill. App. 3d 1005, 1009 (1st Dist. 2008) ("Established case law further illuminates the analysis regarding this issue. "An interlocutory order may be modified or vacated at any time before final judgment.'") (citations omitted).

Counsel on the Fee Petition, thus resulting in the Court erroneously concluding that Petitioning Counsel had met their burden of proof when in fact they had not; (3) it mistakenly decided the Fee Petition without first deciding HCH's pending motion for proper application of amounts paid to IBP for the "Developer Bonds" ($550,000); (4) it mistakenly factored the contributions of Judge Sherlock and Mr. Carey into the fee award to Petitioning Counsel; (5) it mistakenly failed to allow HCH to make further argument at either a live or virtual hearing, when previously scheduling the Fee Petition for oral argument; and (6) it mistakenly included the previously-awarded "tax gross-up" amounts in its fee award even though there was no evidence that the Intervening-Plaintiffs actually paid any taxes on amounts recovered, and regardless the Intervening-Plaintiffs never proved that the limited partnerships (whose award is the denominator for the Court's fee Order to counsel) paid such taxes.

I. The Court Mistakenly Refused To Apply The Lodestar Method

The Court cited *Lasday v. Weiner*, 273 Ill. App. 3d 461 (1st Dist. 1995), to support its fee award. (*See, e.g.*, Order, p. 17.) In *Lasday*, however, the First District Appellate Court applied the lodestar method, with no multiplier, as the basis to award fees. *Lasday* was decided by the First District Appellate Court less than two months before *Ryan v. City of Chicago*, 274 Ill. App. 3d 913 (1st Dist. 1995), the case upon which this Court relied to justify its refusal to perform a lodestar cross-check. (Order, pp. 9, 18: "i. A Lodestar Cross Check is unnecessary. Defendants' [*sic*] argue this court should conduct a lodestar cross-check to ensure any percentage is reasonable. The court declines Defendants' invitation to conduct a lodestar cross-check. As stated, this case is similar to Ryan regarding the difficulty in performing a lodestar analysis.")

A. The Court Misapplied *Ryan*

1. *Ryan* Requires At Least A Lodestar Cross-Check

Ryan fully reinforces the principle that the lodestar method should be applied for one of two purposes in a common fund fee award: (a) as the basis to award fees, instead of the percentage of recovery method, or (b) as a basis to ensure the reasonableness of a fee award if the court decides to award fees based on the percentage of recovery method, by using the lodestar method as a cross-check. The Court failed to do either.

In fact, in *Ryan*, the fee petition was based upon both a "percentage of recovery" basis **and a "lodestar basis**," to ensure the reasonableness of the fees claimed. *Ryan*, 274 Ill. App. 3d at 917-18 (emphasis added). The trial court, affirmed by the First District, applied the lodestar method as a cross-check, as noted by the First District in *Ryan*:

> Finding a meaningful lodestar analysis of Krislov's fees to be "nigh impossible," "unworkable in this case," and stating that "the findings could never be based on anything other than conjecture, surmise, intuition or gut feelings," the court adopted a percentage-of-the-fund method and awarded Krislov $1,993,742.35 as a 33 ⅓ % fee from the $5,981,227.05 benefit conferred upon Firemen's Fund. **For comparative purposes only, the court also *found the fee supported by an approximate lodestar* analysis based on 5000 hours, a $175/hour rate and a 2.1 multiplier.**

Id. at 918 (emphasis added). "Comparative purposes only" is synonymous with "cross-check." In other words, application of the lodestar method in *Ryan*, coming to $1,837,500 ($5,000 x 175 x 2.1), confirmed that the $1,993,742.50 award affirmed by the First District was reasonable. *Id.*

This Court's reliance on *Ryan* to support its decision not to perform a lodestar cross-check is at odds with the *Ryan* court's actual application of the lodestar method, as a cross-check. By refusing to apply the lodestar method at least to cross-check the fees awarded, the Court had no basis to determine the reasonableness of the fee award and for this reason alone the Court should reconsider its award.

2. The Defendants in *Ryan* Challenged Counsel's Hours, Unlike Here

Unlike in *Ryan,* this Court had ample evidence to apply the lodestar method as a cross-check. Indeed, in the section of its Order entitled "The Hours Expended by Petitioning Counsel," the Court spent several pages analyzing Petitioning Counsel's billable hours to support its finding that Petitioning Counsel spent a total of 6,299.51 hours on the case and to find, down to the hundredth of an hour, that the Court could theoretically reduce those hours to 5,728.63 by eliminating certain entries. (Order, p. 16.) The Court held:

> The court has reviewed the entries in the log and cannot conclude that the hours claimed are excessive, redundant, or otherwise unrelated to the litigation. Therefore, **the court finds that the hours expended by Petitioning Counsel support the court's percentage fee award.**

(*Id.* (emphasis added).) If the Court had enough information from Petitioning Counsel's billable hours to reach this conclusion, it necessarily follows that the Court had more than enough information to apply a lodestar cross-check.

If anything, the Court's task here was far simpler than the task confronting the trial court in *Ryan,* because unlike in that case, **HCH** did **not** contest Petitioning Counsel's hours. (*See* Order, p. 16: "**Notably**, Defendants have not made any substantial argument that the entries in the time logs are excessive, duplicative, or otherwise not related to the litigation." (emphasis added).) As the *Ryan* court observed in resolving defendants' objection to petitioning counsel's billable hours:

> The case *sub judice* illustrates the advantages in granting the circuit court discretion to choose either the lodestar or percentage method. The circuit court found a lodestar analysis impossible because the case involved not only "9 years of legal efforts and more than 5700 billable hours" **but "[n]either the lawyers challenging the bona fides of Krislov's time entries** nor the court charged with valuing his efforts were involved during the first six years of the relevant nine-year period." **The court found additional obstacles to a credible lodestar analysis including the fact that Krislov represented four city pension funds, so that allocation of the myriad time entries to that time spent solely for Firemen's Fund was impossible**…

> Percentage analysis approach eliminates the need for additional major litigation and further taxing of scarce judicial resources **which occurred here** as a result of plaintiffs' request for attorneys' fees. Significantly, according to plaintiffs, nearly half of the 11,000 page record in this case is devoted to the fee litigation.

Ryan, 274 Ill. App. 3d at 924 (emphasis added). Simply put, the above did not "occur here."

One of the appellant's briefs in *Ryan* provides further factual background showing how that fee litigation was materially different from this case:

> **The attorney fees and costs requested in Krislov's fee petition contained billable hours for 20 different attorneys and seven law firms**. (See C4597-98). **The petition, however, was signed and verified by Krislov alone.** (C4908-11). **Krislov admitted that he had no way of verifying any time recorded by attorneys other than himself.** (S2319, 2323-32). Of the 2,000 hours allocated to the Firemen's Fund and requested in the petition, more than 570 hours were spent by Krislov in connection with the instant fee litigation. (C5570-5630). **Krislov's time records mostly contained aggregate daily time entries that did not separately identify the time spent on individual tasks.** (See *infra* at 44-46). **Time entries also often provided no detail as to the actual tasks performed by counsel, but rather only specified generally that time was being spent on research, drafting, court appearances and meetings.** *(Ibid.)* In its ruling on counsel's fee petition, the Circuit Court explained that a proper lodestar analysis in this case would be "nigh impossible." App. A at 15; see *id*. at 17-18.
>
> After some limited fee discovery, including depositions of Krislov and the parties' experts, the Firemen's Fund filed a memorandum opposing Krislov's fee petition and a separate motion to strike the petition in its entirety on the grounds that, *inter alia:* **… the fee petition contained insufficient detail from which to determine the reasonable number of hours devoted by counsel to particular tasks benefitting the Firemen's Fund; (3) the petition requested fees on behalf of 19 different attorneys other than Krislov who never petitioned the court for fees, and who (other than Krislov and one other) never presented any testimony or other evidence to explain the reasonableness of their fee requests; (4) Krislov's request for costs contained no detail as to what those costs were, why they were incurred or how they were calculated; (5) approximately 25% of counsel's petition was comprised of fees and expenses incurred in connection with the fee litigation in violation of this Court's ruling in *Baksinski. . . .***

Ex. 2, *Ryan* appellate brief, pp. 10-11 (emphasis added).

None of these circumstances are present here. There were not "seven law firms" claiming fees in the Amended Fee Petition in this case; there was one. There was no admission by

Petitioning Counsel, or any claim by HCH, that counsel could not verify the time spent by any attorneys, as there was in *Ryan.* Unlike *Ryan*, there was no claim by HCH that Petitioning Counsel's time records improperly aggregated time and did not delineate time spent on individual tasks (or for other clients). Unlike the *Ryan* defendants, HCH did not contest the amount of billable hours claimed by Petitioning Counsel. Therefore, unlike *Ryan*, extensive collateral litigation is not necessary here to conduct a reasonableness cross-check using the lodestar method. Petitioning Counsel admitted at one of its depositions that it could easily set forth a specific lodestar amount. (HCH Response, Ex. B, p. 34.) For this reason also, the Court should reconsider its fee award and its refusal to apply a lodestar cross-check to ensure the reasonableness of its fee award.

At most, the only contested issue was the hourly rate, which is hardly a justification for the Court's refusal to apply the lodestar cross-check. In its 2017 fee petition, Petitioning Counsel sought to apply a $475 hourly rate to its invoices. Now, through the Order, the Court has awarded counsel at least **five times** that hourly rate. HCH sought to impose Petitioning Counsel's actual rates as shown on the billable hour itemizations that Petitioning Counsel itself submitted, which came to $415.27 an hour. This is a legal issue. Petitioning Counsel, in its Fee Petition Reply, cited a case in support of its argument that the Court could apply a higher hourly rate than was actually billed contemporaneously by Petitioning Counsel, and HCH asserted that counsel's cases did not support its position. As addressed in HCH's Sur-Response, the only case counsel cited, *Vizcaino v. Microsoft Corp.*, 290 F. 3d 1043, 1051 (9th Cir. 2002), is a class action where defendants agreed to the fee but the court surveyed multipliers as low as .6. *Vizcaino* is inapplicable and unsupportive of Petitioning Counsel's position, and the real hourly rates actually recorded by counsel must be analyzed to perform a lodestar analysis. Thus, far from extensive

"collateral litigation" on Petitioning Counsel's billable hours, the Court had to only decide a legal issue as to the proper hourly rate.

In sum, the Court erred in suggesting there would be extensive collateral litigation if it applied the lodestar method. The Court easily could have, and should have, applied the lodestar method, based on the parties' Fee Petition filings, at least as a cross-check. The Court's refusal to do so renders the Order contrary to Illinois law, as cases such as *Lasday*, *Ryan*, and *Shaun Fauley*, *Sabon, Inc.* show that the lodestar method is alive and well in Illinois.

B. All Petitioning Counsels Themselves Admit That Lodestar Should Be Applied

All attorneys petitioning for fees in this case—Petitioning Counsel, Carey, and Judge Sherlock—acknowledged that the Court should apply the lodestar method at least as a cross-check. Petitioning Counsel, in its 2017 fee petition, applied the lodestar method to "**demonstrate[] the reasonableness**" of its $1,600,000 proposed fee on the Shaffer Settlement. (HCH Response, Ex. O, 2017 fee petition, pp. 15, 17-18) (emphasis added).) To perform this "lodestar cross-check," Petitioning Counsel applied a $475 hourly rate to its then-alleged 4,600 hours of work, which equaled $2,100,000. (*Id.*) Back then, Petitioning Counsel admitted that "[t]he Court is vested with the discretionary authority to choose the percentage-of-the-award method **or** the lodestar method to determine the amount of fees to be granted to Plaintiffs' Counsel." The Court's Order overlooked this part of the record. Likewise, Petitioning Counsel reluctantly applied the lodestar in its Reply in support of its 2019 Fee Petition, citing no expert testimony in support of its vaguely-suggested multiplier of "at least five or six."

Carey and Judge Sherlock also applied the lodestar method in their 2017 and 2019 fee petitions, applying a multiplier of three in their 2019 fee petition, which Carey admitted was a high multiplier, while testifying that the Court should apply the lodestar method to cross-check the

percentage method. (HCH Response, Ex. P, Carey Dep., pp. 29-39; HCH Response, Ex. O, pp. 15, 17-18; Carey/Sherlock January 25, 2019 fee petition, pp. 11-12, where they describe their proposed multiplier of 3 as "substantial.")

C. The Court Ignored That Application Of The Lodestar Method Is Not Only Called For By *Ryan*, But Also By Other Cases Upon Which The Court Heavily Relied

The Court heavily relied on an unpublished federal district court case, *Hale v. State Farm Mut. Auto. Ins. Co.,* 2018 WL 6606079 (S.D. Ill. Dec. 16, 2018), in ruling against HCH. But the *Hale* court only ruled upon a fee petition agreed upon by almost all class members, except one objector, and all the Defendants. *Hale*, 2018 WL 6606079 at *4. Therefore, *Hale* was essentially uncontested. Even so, the *Hale* court performed a lodestar cross-check, which yielded an hourly rate of $527.34, **less than 25%** of what this Court awarded Petitioning Counsel in this case. The high hourly rate agreed upon by the defendants in *Hale* was justified because the stakes in *Hale* were far greater: 4.7 million consumers asserted multi-jurisdictional fraud and racketeering claims against an insurer for using faulty car replacement parts (physically endangering insureds) and funneling money to an Illinois Supreme Court justice's campaign to influence the litigation. *Hale*, 2018 WL 6606079 at *1-2.

Moreover the Court erred in its interpretation of *Cook v. Niedert*, 142 F. 3d 1004 (7th Cir. 1998), which HCH cited in response to the Amended Fee Petition in addition to *Lasday* (lodestar applied in 1995 case by First District) along with *Shaun Fauley, Sabon, Inc. v. Met. Life Ins. Co.*, 2016 IL App (2d) 1502336 (lodestar method must be applied to cross-check the percentage method to ensure a reasonable fee). The hourly rate in *Cook* ($750) was deemed much too high under local (Chicago) standards in a case that is just as similar to this case as is *Ryan* (if not more so). *Cook*, a published Seventh Circuit opinion in a class action alleging mismanagement of pension funds, is more on-point and provides more guidance than *Hale*, an unpublished federal district

court decision from downstate Illinois that addressed much larger issues. If the $750 hourly rate in *Cook* was too high, the $2,361.32+ hourly rate awarded here is indisputably unreasonable.

As the Illinois Supreme Court held in *Brundidge v. Glendale Federal, F.S.B.*, 168 Ill. 2d 235, 241 (1995), the percentage method "sometimes resulted in strikingly large fee awards generating criticism from the press and those within the legal profession that the fees were disproportionate to the actual efforts expended by the attorneys." That is certainly the result here. The Court should reconsider its decision to not apply the lodestar method at least as a cross-check, and then apply that method as set forth by HCH to come to a fair and reasonable fee award.

II. The Court Mistakenly Imposed The Burden Of Proof On The Motion On HCH

"The general rule is that during the progress of an action, the movant bears the burden of sustaining the grounds of his motion." *Bright v. Dicke,* 166 Ill. 2d 204, 210 (1995). Here, Petitioning Counsel submitted no expert testimony in support of its Fee Petition and failed to cite authority for its vaguely-suggested lodestar multiplier. Petitioning Counsel had the burden-of-proof on its fee petition, and did not meet it as a matter of law. HCH, who did not have the burden-of-proof, supported their opposition with two expert affidavits specific to this case. On this basis alone, Petitioning Counsel failed to meet its burden.

Moreover, the Court found that Professor Silver, in the affidavit that Professor Silver submitted for this case, misstated Illinois law regarding the Common Fund Doctrine, implying that Silver found that the doctrine was inapplicable to cases like here where the defendants themselves are recovering the lion's share of the common fund. (Order, p. 5, citing Silver Affidavit ¶¶ 9-10.) But that is not what Professor Silver averred. He clearly stated that HCH's recovery of the common fund impacted the **reasonableness** of a common fund fee award, not that it barred a common fund fee award:

9. Based on my review, I do not believe that my Hale Declaration has significant relevance to the request for attorneys' fees that has been lodged in the Girsch Lawsuit. For example, I am concerned about my Hale Declaration's relevance to this Lawsuit given my understanding the Defendants in the Girsch Lawsuit own a portion of the common fund asserted by The Law Offices of Edward T. Joyce & Associates, P.C., let alone over 97% of it. This was not the factual scenario I analyzed in the Hale Lawsuit.

10. More specifically, in the Hale Lawsuit, as far as the common fund, the defendants were nothing more than payors into the alleged common fund. They had no claim of ownership in the common fund. **In my opinion, this is a key distinction that would affect the reasonableness of any fee award. If this were a class action, I would consider that fact as material, and one that would likely and significantly diminish any fee award to class counsel, subject to the facts of the particular case.**

    (HCH Sur-Response, Ex. A.)

There is no Illinois law to the contrary; reasonableness is still the paramount concern, and a requirement, of any common fund fee award. *See, e.g.*, *Ryan*, 274 Ill. App. 3d at 921-22 ("[A]n attorney is entitled to an award from the fund for the **reasonable** value of his or her services."). In fact, the Court had the discretion to decline to award any fees to Petitioning Counsel. *See, e.g.*, *Levy v. Markal Sales Corp*., 268 Ill. App. 3d 355, 382 (1st Dist. 1994) (affirming the trial court's denial of any attorney's fees to the prevailing counsel on a derivative claim, since the decision to award common fund fees is within the trial court's discretion). No Illinois case holds that a court cannot consider defendant's recovery of the common fund as a factor to assess the **reasonableness** of a fee award. The Court agreed with Professor Silver's statement that common fund cases are fact-specific, and therefore Hulina and Collins' overwhelming recovery of the common fund can and should have been considered in assessing reasonableness of fees.

At bottom, Petitioning Counsel was awarded over seven to eight times what the Court itself exposed as the "real damages here" (about $1,900,000 in derivative recovery to the Intervening-Plaintiffs) based on the legal fiction that Hulina and Collins are going to pay themselves over

$67,000,000. (HCH Response, Ex. T, p. 12: "it's also my understanding that the real number is not anywhere close to 86 from [HCH's] pockets; it's somewhere around 2 million.") This fundamental fact cannot be ignored and illustrates the unreasonableness of the current fee award. Illinois law—and the reasonableness standard at its core—does not support this result.

III. The Court Mistakenly Ruled Without First Deciding A Motion Directly Impacting The Fee Petition

Still pending before this Court is HCH's May 26, 2020 Motion Regarding the Proper Application of Amounts Paid to IBP for the "Developer Bonds," in which HCH assert that the $550,000 paid by IBP's general partners, plus the attendant "tax gross up" and prejudgment interest amounts, must be offset from the gross derivative award to IBP. Intervening-Plaintiffs filed a written response, and raised no substantive objection. Through the Order, however, the Court has awarded Petitioning Counsel 20% of an amount that has not yet had this amount offset against it, which erroneously and further inflates the fee award.

IV. By Awarding Fees Based On The Percentage Method, And Refusing To Apply The Lodestar Method, The Court Implicitly Factored The Contribution Of Judge Sherlock To This Case Into The Fee Award To Petitioning Counsel

At page 6 of its Order, the Court cited Justice McMorrow's statement from *Brundidge* that "[t]he lodestar method better accounts for the work done, while the percentage of fund method reflects the results achieved." This statement supports HCH's argument that the lodestar method, better accounting for the "work" that Petitioning Counsel has done, was more appropriate because Judge Sherlock had nothing to do with the hours spent by Petitioning Counsel. But there is no dispute that Judge Sherlock and his partner Peter Carey had involvement, perhaps significant, in the "results achieved" in this case. Thus, by awarding fees pursuant to the percentage-of-recovery method based on the overall result achieved, the Court has also implicitly factored in the contributions of Judge Sherlock and Carey into the huge fee award to Petitioning Counsel.

Further, contrary to the Court's Order, the lodestar method would eliminate the collateral litigation (in the trial and appellate courts) stemming from Judge Sherlock's critical role in the case and the resulting dispute over what percentage of the judgment is attributable to his efforts. That is because the lodestar method would isolate Petitioning Counsel's from Judge Sherlock's work rather than focusing on the end results of litigation culminating from multiple attorneys' efforts. This problem with the Court's exclusive reliance on the percentage method is exacerbated by the fact that Judge Sherlock and Mr. Carey will indisputably receive over $1,000,000 of the Court's massive fee award, an amount that would be far less had the Court properly applied the lodestar cross-check and come to a reasonable fee award. This increases the appearance of impropriety.

V. The Court Mistakenly Ruled Without Oral Argument

The Court set the Fee Petition for a "hearing" on March 19, 2020. (Ex. 3, December 19, 2019 Order.) On April 24, 2020, after the onset of the COVID-19 pandemic, Petitioning Counsel filed a Motion for Ruling on its Fee Petition (requesting a ruling by mail, or, alternatively, a hearing via Zoom). HCH responded on April 27, 2020, requesting that the hearing should be continued to a time when circumstances would allow for a live hearing since the Fee Petition presented no emergency, was of paramount significance (and what much of this case has been about from the start), and because the pandemic should not jeopardize HCH's full right to be heard. (Ex. 4, HCH Response.)

The right to be heard is paramount under Illinois law, including civil cases. *Stewart v. Lathan*, 401 Ill. App. 3d 623, 627-28 (1st Dist. 2010). The Court's Order reflects HCH's points, that the parties should have the right to be fully be heard and that there was no emergency requiring a ruling on the Fee Petition at this time without oral argument. (Order, p. 4.) Unfortunately, HCH

did not get their full day in court on what has become a $15,000,000 (or more) issue. The Court should vacate its Order and give HCH a chance to orally argue their opposition, at least via Zoom.

VI. The Court Erred In Awarding Fees Based On "Tax Gross-Up"

The Court also erred in granting attorneys' fees based on a judgment that included an improper award of what the Intervening-Plaintiffs called "tax gross-up," that was not justified by the law or the facts. By HCH's calculation, $17,919,794 of the gross derivative award is attributable to tax gross-up, corresponding to $3,583,958.80 of the fees awarded.

None of the Intervening-Plaintiffs should owe federal income taxes on the compensatory award. The tax consequences of an award of damages or a settlement depends upon the nature of the litigation and on the origin and character of the claims. *Simpson v. Comm'r*, 141 T.C. 331, 339 (2013), *aff'd sub nom. Simpson v. Comm'r of Internal Revenue*, 668 F. App'x 241 (9th Cir. 2016) (citing *U.S. v. Burke*, 504 U.S. 229, 237 (1992)). The question to be asked is "in lieu of what were the damages awarded?" *Fono v. Comm'r*, 79 T.C. 680, 692 (1982). The damages awarded to the limited partnerships here were intended to replace the tax-free interest income on certain tax-exempt bonds to which the limited partnerships allegedly were entitled. Given that origin of Intervening-Plaintiffs' claims, the damages award should also be tax-free.

More to the point, the Court need not engage in any lengthy argument over whether or not the damages award will be subject to taxation because we already have the answer via the Shaffer Settlement. The Shaffer Settlement was paid in 2017 and was allocated in the exact same manner as the judgment at issue here. If the Intervening-Plaintiffs did not pay taxes on the Shaffer Settlement, then awarding them a tax gross-up on the compensatory damages in the judgment would represent nothing more than a windfall. The tax gross-up should therefore be stricken from the judgment and the attorneys' fee award should be reduced accordingly.

Alternatively, even if the Intervening-Plaintiffs did pay taxes on the Shaffer Settlement, it was improper to award a tax gross-up to the limited partnerships rather than directly to the Intervening-Plaintiffs because the expected tax treatment of the judgment for the Intervening-Plaintiffs differs fundamentally from that of the Defendants. Unlike the Intervening-Plaintiffs, Hulina and Collins will be entitled to a deduction for the amounts they pay on the judgment pursuant to IRC §§ 162 and 212, which would more than offset the gains that the limited partnerships will allocate to them. The Intervening-Plaintiffs will not. Because Hulina and Collins will be allocated roughly 97% of the gains, 97% of the tax gross-up should be eliminated, and Petitioning Counsel's fee award should be similarly reduced.

Wherefore, HCH respectfully request that the Court reconsiders its July 30, 2020 fee petition ruling, including, but not limited to, vacating the Court's July 30, 2020 Order, conducting a live or remote hearing on the issues raised herein, awarding reasonable fees based on a proper application of the lodestar method, and other relief deemed just.

DEFENDANTS

By: /s/ *Robert H. Lang*
One of their Attorneys

THOMPSON COBURN LLP (Firm No. 48614)
John J. Cullerton (jcullerton@thompsoncoburn.com)
Robert H. Lang (rhlang@thompsoncoburn.com)
Renato Mariotti (rmariotti@thompsoncoburn.com)
55 E. Monroe Street, 37th Floor
Chicago, IL 60603
312.346.7500

LOCKE LORD LLP (Firm ID: 44058)
By: */s/ Matthew T. Furton*
Matthew T. Furton
(mfurton@lockelord.com)
111 S. Wacker Drive, Suite 4100
Chicago, IL 60606
Telephone: 312 443-0700
Attorneys for Defendant E. Thomas Collins, Jr.

ICE MILLER LLP (Firm ID: 39512)
By: */s/ John D. Burke*
John D. Burke
(john.burke@icemiller.com)
200 W. Madison, Suite 3500
Chicago, IL 60606
Telephone: 312-726-1567
Attorney for Defendant R. Hulina

TABET DIVITO & ROTHSTEIN LLC (#38234)
By: */s/ Christopher D. Liguori*
Christopher D. Liguori
cliguori@tdrlawfirm.com
209 S. LaSalle St., 7th Floor
Chicago, IL 60604
Attorneys for Dennis J. Hiffman

CERTIFICATE OF SERVICE

The undersigned, a non-attorney, certifies that a copy of **HCH's Motion to Reconsider July 30, 2020 Fee Petition Ruling,** was served on the parties below via e-mail on August 31, 2020.

/s/ Arianna Thornton

[X] Under penalties as provided by law pursuant to 735 ILCS 5/1109, I certify that the statements set forth herein are true and correct.

SERVICE LIST

Edward T. Joyce
Robert D. Carroll
Edward T Joyce & Associates, P.C.
135 South LaSalle St. - Suite 2200
Chicago, Illinois 60603
rcarroll@joycelaw.com
ejoyce@joycelaw.com

Adam L. Hoeflich
Bartlit Beck LLP
54 W. Hubbard St.
Suite #300
Chicago, IL 60654
Adam.hoeflich@bartlit-beck.com

Jason M. Rosenthal
Much Shelist, P.C.
191 N Wacker Dr.
Suite 1800
Chicago, IL 60606
jrosenthal@muchlaw.com