IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

David F. Pollock, et al.; on Behalf of Themselves and All Others Similarly Situated, Plaintiffs, vs. *Energy Corporation of America*, Defendant.	Case No. 2:10-cv-01553-JFC-RCM Robert C. Mitchell United States Magistrate Judge

APPLICATION FOR ATTORNEYS FEES

Plaintiffs, by counsel, respectfully submit their Application for Attorneys Fees as follows:

On March 5, 2015, the Court entered a final judgment after trial on behalf of Plaintiffs in the amount of $911,922.16 plus prejudgment interest, and against the Defendant, Energy Corporation of America [Exhibit A].

I. APPLICATION FOR ATTORNEY FEES

(a) Percentage Fee Request

In cases where a common fund is created, the percentage-of-recovery method is generally favored, and is designed to allow courts to award fees from the fund in a manner that rewards counsel for success and penalizes for failure. *In Re Prudential Insurance Company*, 148 F.3d 283; 1998 U.S. App. LEXIS 17057 (3d Cir. 1998).

Class Counsel, William Caroselli and Robert C. Sanders, have litigated this case without any assurance of receiving any fees except in the event of a successful judgment or settlement, and agreed to advance all of the costs and expenses necessary to prosecute this case. At the time that they retained Class Counsel Plaintiffs entered into a written contingency fee agreement by which they agreed Class Counsel would be entitled to a fee of 33 1/3% of the amount recovered plus advanced costs [Exhibit B].

Class Counsel is requesting a fee of 30% of the verdict, however this amount would include both attorney fees and costs. Plaintiffs have attached to this Motion a Lodestar Summary of Caroselli Beachler McTiernan & Conboy [Exhibit C]. Also attached is the Lodestar Summary of Attorney Robert C. Sanders [Exhibit D]. Also attached are Costs incurred by Attorney Sanders and Attorney Caroselli related to litigation of the case [Exhibit E].

(b) Percentage Fee Analysis

In common fund cases in which the attorneys' fees and the clients' award come from the same source and the fees are based on a percentage amount of the clients' settlement award, district courts should consider several factors in setting a fee award. These factors, known as the *Gunter* factors, include: (1) the size of the fund created and the number of persons benefitted; (2) the presence or absence of substantial objections by members of the class to the settlement

terms and/or fees requested by counsel; (3) the skill and efficiency of the attorneys involved; (4) the complexity and duration of the litigation; (5) the risk of nonpayment; (6) the amount of time devoted to the case by plaintiffs' counsel; and (7) the awards in similar cases. *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190 (3d Cir. 2000).

(i) The Size Of The Fund Created

The "size of the fund" factor is an allusion to cases of such exceptionally large class recoveries that courts have found it unreasonable to award fees within the normal range (19%-45% - see *infra*). In such cases a sliding scale should be employed in avoidance of unconscionability. *In Re Prudential Insurance Company*, *supra* (common fund of $410 Million); *In Re: At&T Corporation Securities Litigation*, 455 F.3d 160; 2006 U.S. App. LEXIS 18279 (3d Cir. 2006) (common fund of $1 Billion). While the recovery on behalf of the class here is substantial, it is certainly not comparable with cases in which it was necessary to utilize a sliding scale.

(ii) The Presence Or Absence Of Objections

At this writing, no objections have been filed by any member of the class to either the verdict or the attorney fees sought here.

(iii) The Skill And Efficiency Of Counsel

This litigation involved complex issues related to oil and gas law, oil and gas operations, and oil and gas engineering and accounting, required the very unique sort of combined legal and industry knowledge and experience possessed by Class Counsel in this case.

(iv) The Complexity and Duration Of The Litigation

This case involved a certified class action for underpayment of royalties. The case was initiated in 2010. During the five years before the case was tried, there were numerous motions and pleadings Class Counsel had to response to and prepare for. The trial of the case took place in March and lasted 4 days.

(v) The Risk of Nonpayment

There was a risk of nonpayment (see the Answer and Motions filed by the Defendant, Energy Corporation of America to ascertain the risk of nonpayment).

(vi) Time Spent And The Lodestar Cross Check

District courts are admonished to use the lodestar method to cross-check the reasonableness of a percentage-of-recovery fee award. When the multiplier is too great, the court should reconsider its calculation under the percentage-of-recovery method, however, the lodestar cross-check, while useful, should not displace a district court's primary reliance on the percentage-of-recovery method. *In Re: At&T Corporation Securities Litigation*, 455 F.3d 160; 2006 U.S. App. LEXIS 18279 (3d Cir. 2006). When used as a cross-check in a common fund case, the lodestar calculation can be adjusted to account for particular circumstances, such as the quality of representation, the benefit obtained for the class, the complexity and novelty of the issues presented, and the risks involved. *See Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 195 n.1 (3d Cir. 2000).

In Exhibit C, counsel accounts for time devoted to this case, as a total of 359.73 hours for Caroselli Beachler McTiernan & Conboy. Attorney Caroselli's hourly rate is $650.00 per hour. Attorney McGowan's hourly rate is $500.00. The Firm Administrator's hourly rate is

$350.00 per hour and Paralegal's hourly rate is $175.00 per hour. The Law office of Robert C. Sanders devoted 791 hours to this case. Attorney Sanders hourly rate is $650.00. This results in a a multiplier of 0.51 as follows:

Lodestar Crosscheck

Total hours (Caroselli Beachler McTiernan & Conboy and The Law Office of Robert C. Sanders)	**1150.73**
Lodestar total (Caroselli Beachler McTiernan & Conboy and The Law Office of Robert C. Sanders)	**$668,193.25**
Total Value of Attorney Fee Request	**$344,405.82**
Multiplier	**0.51**

The Third Circuit has observed that courts have frequently found awards in the range of multipliers from one to four as reasonable. *In re Prudential*, 148 F.3d at 341. But, the "... multiplier need not fall within any pre-defined range, provided that the District Court's analysis justifies the award. (footnote omitted)" *In re Rite Aid Corp. Sec. Litig*., 396 F.3d 294, 307 (3d Cir. 2005). Noted is the fact that the multiplier approved on remand to the District Court in *In re Rite Aid, supra,* was 6.96. See, *In re Rite Aid Corp. Sec. Litig*., 362 F. Supp. 2d 587 (ED PA 2005).

The 0.51 multiplier here is justified on a number of fronts. First, and as separately discussed above as they pertain to each of the *Gunter* factors, the risk of nonpayment, the complexity of the settlement and the efficiency and skill which counsel brought to bear are enhancing features which support it.

Second, the time (1,150.73 hours) upon which the lodestar multiple is based is deceptively lean when compared to the hours which could, and surely would have been accrued had either counsel worked for a large law firm.

(vii) Awards In Similar Case

While the outer limits of a District Court's discretion to exceed a multiplier of 4 may otherwise be difficult to fathom from the diverse array of fact patterns in the cases in which they do so, the Third Circuit makes eminently clear in *In re Rite Aid Corp. Sec. Litig*., *supra* at 307, that "...[t]he lodestar cross-check does not trump the primary reliance on the percentage of common fund method." In this respect the 30% sought here is well within the range.

District Courts within this circuit have observed that percentage awards frequently range between 19% and 45% of the common fund. *In re SmithKline Beckman Com. Secur. Litig.*, 751 F.Supp. 525, 533 (E.D.Pa. 1990); *In re Corel Comoration, Inc. Securities Litig*., 293 F.Supp. 2d 484, 497 (E.D.Pa. 2003). See also, *In re U.S. Bioscience Securities Litigation*, 155 FRD. 116 (E.D.Pa. 1994) (attorney fee of 30% was appropriate in securities class action that resulted in settlement where such figure represented contingent fee that likely would have been negotiated in relevant market for legal services in business litigation of type involved in the case.); *Baldwin Emergency Med. Serv. v. Highmark, Inc.*, 2006 U.S. Dist. LEXIS 49287 (W.D.Pa. 2006) (30% fee). Finally, Counsel for Plaintiffs in *Fredericks et al v. Range Resources et al*., case number 1:08-cv-00288, in the U.S. District Court for the Western District of Pennsylvania.was given 40% Attorney Fee and didn't take the case to trial.

Wherefore Class Counsel therefore respectfully prays for an Order of Court awarding attorney's fees and costs of 30% of the total verdict or $344,405.52.

Respectfully submitted,

CAROSELLI BEACHER McTIERNAN
& CONBOY LLC

/ s / William R. Caroselli
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PA Attorney ID: 00452

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Pittsburgh, PA 15222

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Class Counsel for Plaintiffs

- and -

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LAW OFFICE OF ROBERT C. SANDERS

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Class Counsel for Plaintiffs

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Defendant.

Case No. 2:10-cv-01553-JFC-RCM

Robert C. Mitchell
United States Magistrate Judge

ORDER

AND NOW, this _____ day of _____, 2015, it is hereby ordered, adjudged and decreed that Plaintiffs' Application for Attorney Fees is granted and Plaintiffs are awarded fees and costs of $344,405.52 which represents 30% of the total verdict amount.

BY THE COURT;

_____; J.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

DAVID F. POLLOCK, et al., Plaintiffs,	)	
vs.	)	Civil Action No. 10-1553
ENERGY CORPORATION OF AMERICA, Defendant.	)	

ORDER

AND NOW, this 30th day of September, 2013, after a de novo review of the submissions and documents in the case, together with the Report and Recommendation, and the objections and responses thereto,

IT IS HEREBY ORDERED that Plaintiffs' Motion for Class Certification (ECF No. 106) is GRANTED IN PART AND DENIED IN PART, as recommended by the magistrate judge;

IT IS FURTHER ORDERED that the following class is certified:

All lessors on an oil and gas lease with Energy Corporation of America or Eastern American Energy Corporation that conveys oil and gas rights to real property in Pennsylvania and:

(1) the lessee deducted charges for interstate pipeline services between November 22, 2006 and March 26, 2012 (subclass one); and/or

(2) the lessee deducted marketing fees from the royalties between November 22, 2006 and March 26, 2012 (subclass two).

IT IS FURTHER ORDERED that class certification is denied as to proposed subclass three;

IT IS FURTHER ORDERED that the Supplemental Report and Recommendation (ECF No. 138) dated September 16, 2013 is ADOPTED as the opinion of the court as supplemented by the accompanying Memorandum Opinion.

By the Court:

Joy Flowers Conti
United States Chief District Judge

POLLOCK v. ECA

CLIENT/ATTORNEY FEE AGREEMENTS

CONTINGENCY FEE AGREEMENT

This contingency fee agreement is entered into by and between Robert C. Sanders of the Law Office of Robert C. Sanders (hereinafter "Attorney") and the person whose signature appears at the bottom right below (hereinafter "Client").

1. Attorney agrees to represent Client in a putative class action to be filed in Pennsylvania against Energy Corporation of America (formerly known as Eastern American Energy Corporation) for the underpayment of natural gas royalties. Attorney will work on the case as "of counsel" and, if admitted by the court, pro hac vice. Pennsylvania counsel on the case will be William R. Caroselli of the Pittsburgh firm of Caroselli, Beachler, McTiernan and Conboy.

2. Client agrees to serve as a Class Representative in the putative class action, and understands that this will require Client to fulfill certain duties and responsibilities, including producing documents in discovery, answering interrogatories, being deposed and appearing as a witness at trial.

3. If the court certifies the case as a class action and the case results in a recovery for the class by way of settlement or judgment, the court will determine the amount of the legal fee to be paid to Attorneys. If there is no recovery in the certified class action, Client will have no obligation to pay Attorneys any fee.

4. Attorneys shall advance all reasonable and necessary expenses needed to prosecute the case, including filing fees, court reporter costs, expert witness fees, consultants' fees, computerized legal research, long distance telephone charges, postage and the like. If the case is certified as a class action and results in recovery for the class by way of settlement or judgment, the court will determine whether and in what amount Attorneys shall be reimbursed from the recovery the litigation expenses advanced by them.

5. In the event the court does not certify the case as a class action, Client agrees to pay Attorneys a fee equal to 1/3 of the gross recovery received by Client by way of settlement or judgment and to reimburse attorneys all reasonable and necessary expenses advanced by them to prosecute Client's case. If there is no recovery in Client's stand alone case by way of settlement or judgment, Client will have no obligation to pay Attorneys any fee and will have no obligation to reimburse Attorneys any litigation expenses advanced by them.

Robert C. Sanders 10/19/2010 — Date

Robert C. Sanders
Law Office of Robert C. Sanders

Date

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Robert C. Sanders 10/19/2010 Laurie L Vecchio 10/19/2010

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Robert C. Sanders Date
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11/2/10
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Patricia L. Christopher 11/9/10

Robert C. Sanders Date Date
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Robert C. Sanders Date
Law Office of Robert C. Sanders

11/9/10 Date

JOHN T. DIBIASE
1749 E. Roy Furman Hwy.
CARMICHAELS, PA. 15320
CELL - 724-998-5551

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Stuart R Wheatley
Robert C. Sanders Date
Law Office of Robert C. Sanders

03/04/11
Date

LODESTAR SUMMARY FOR
CAROSELLI BEACHLER McTIERNAN & CONBOY, LLC

In The United States District Court for The Western District of Pa.
Case No. 2:10-cv-01553-JFC-RCM

DAVID F. POLLOCK, et al.; on Behalf of Themselves and All Others Similarly Situated, Plaintiffs, vs. ENERGY CORPORATION OF AMERICA, Defendant.

L. NAME	F. NAME	STATUS	HOURLY RATE	NUMBER HOURS	LODESTAR
Caroselli	William	Partner	$ 650.00	182.88	$ 118,872.00
McGowan	David	Partner	$ 500.00	12.50	$ 6,250.00
Hinson	Carolyn	Firm Admin	$ 350.00	7.00	$ 2,450.00
Heidinger	Stefan	Paralegal	$ 175.00	157.35	$ 27,536.25
TOTALS				**359.73**	**$ 155,108.25**

LODESTAR SUMMARY FOR
The Law Office of Robert C. Sanders

In The United States District Court for The Western District of Pa.
Case No. 2:10-cv-01553-JFC-RCM

DAVID F. POLLOCK, et al.; on Behalf of Themselves and All Others Similarly Situated, Plaintiffs, vs. ENERGY CORPORATION OF AMERICA, Defendant.

L. NAME	F. NAME	STATUS	HOURLY RATE	NUMBER HOURS	LODESTAR
Sanders	Robert	Attorney	$ 650.00	790.90	$ 514,085.00
TOTALS				**790.90**	**$ 514,085.00**

Caroselli, Beachler, McTiernan & Conboy

20 Stanwix Street, Seventh Floor
Pittsburgh, PA 15222
Phone (412) 391-9860
Fax (412) 391-7453

Our File #:243795-000000000001
Caption :POLLOCK,DAVID F.,ESQ.- CL-R882

Disbursements

Date	Description	Amount
12/30/2010	FILING FEE. CHARGED TO TC VISA ON 11/22/10.	$350.00
12/8/2011	FEDEX; Invoice # 770848778; EXPRESS MAIL TO ROB SANDERS ON 11/22/11	$20.90
3/2/2012	GAS ANALYTICAL SERVICES, INC.; Invoice # POLLOCK, DAVID; WITNESS FEE - PER DIEM	$40.00
3/2/2012	GAS ANALYTICAL SERVICES, INC.; Invoice # POLLOCK, DAVID; WITNESS FEE -MILEAGE	$62.22
3/2/2012	GAS ANALYTICAL SERVICES, INC.; Invoice # POLLOCK, DAVID; WITNESS FEE - MILEAGE	$31.11
3/2/2012	RANDALL C. FARKOSH; Invoice # POLLOCK, DAVID; WITNESS FEE - MILEAGE	($3.88)
3/2/2012	RANDALL C. FARKOSH; Invoice # POLLOCK, DAVID; WITNESS FEE - PER DIEM	$40.00
3/2/2012	RANDALL C. FARKOSH; Invoice # POLLOCK, DAVID; WITNESS FEE - MILEAGE	$3.88
3/2/2012	GAS ANALYTICAL SERVICES, INC.; Invoice # POLLOCK, DAVID; WITNESS FEE - MILEAGE	$7.75
3/2/2012	GAS ANALYTICAL SERVICES, INC.; Invoice # POLLOCK, DAVID; WITNESS FEE - MILEAGE	($31.11)
3/13/2012	CAR SERVICES (SUNNY'S) CHARGED TO WRC VISA.	$1,713.94
5/18/2012	GAS ANALYTICAL SERVICES, INC.; Invoice # POLLOCK, DAVID; WITNESS FEE - MILEAGE	($7.75)
5/18/2012	RANDALL C. FARKOSH; Invoice # POLLOCK, DAVID; WITNESS FEE - PER DIEM	($40.00)
5/30/2012	TRAVEL - EMBASSY SUITES. CHARGED TO WRC VISA 5/11/12.	$288.66
7/3/2012	FINLEY CONSULTING & S; Invoice # POLLOCK, DAVID; COURT COST - SERVICE	$195.25
4/3/2013	FEDEX; Invoice # 221727599; EXPRESS MAIL TO JUDGE MITCHELL ON 3/4/13	$21.28
5/6/2013	DONALD E. ZIEGLER; Invoice # POLLOCK, DAVID; ARBITRATION/MEDIATION FEES.	$1,750.00
6/11/2014	EXPRESS MAIL TO ROBERT SANDERS 5/5/14	$15.93

6/11/2014	EXPRESS MAIL (UPS) SENT TO ROBERT SANDERS 4/25/14.	$23.01
7/30/2014	UPS TO KEVIN ABBOTT 5-30-14. CHARGED TO FIRM VISA.	$16.07
12/12/2014	BULLDOG OFFICE PRODUCTS; Invoice # 1630894; CUSTOM ENVELOPES FOR MASS MAILING	$319.23
1/13/2015	MASS MAILING POSTAGE EXPENSES.	$804.54
2/23/2015	EXPRESS MAIL TO ROBERT SANDERS (UPS) ON 1/28/15. CHARGED TO FIRM VISA	$24.53
3/6/2015	MODERN REPRODUCTIONS, INC.; Invoice # POLLOCK; EXHIBITS (9 INKJET PRINTS ON FOAMCOR)	$548.43
3/30/2015	EXPRESS MAIL TO ROB SANDERS ESQ. ON 2/27/15. CHARGED TO FIRM VISA	$75.46
4/2/2015	KAREN M. EARLEY; Invoice # POLLOCK, DAVID; TRANSCRIPT - COPY OF HEARING AND JURY TRIAL	$381.60
		Total Disbursements $6,651.05

Cash Receipt History

Type	Date	Cash Amount	Expense Amount
	Total Receipts	$0.00	$0.00

Outstanding Balance $6,651.05

Note :

Click here to lookup another matter

EXPENSES ADVANCED
BY ROBERT C. SANDERS IN *POLLOCK v. ECA.*

DATE	EXPENSE	AMOUNT
9/19/2011	**Travel** -Attend Status Conference in Pittsburgh on 9/19/2011 520 miles x .555=$288.60 Tolls 2 x $18= $36.00 1 night hotel (Red Roof Inn)=$73.42	$398.02
1/24/2012	**Travel**-Attend Status Conference in Pittsburgh on 1/24/12 520 miles x .555=$288.60 Tolls 2 x $18= $36.00 Hotel (Holiday Inn Express)=$124.26	$448.86
2/8/2012-2/11/ 2012	**Travel** – To prepare Plaintiffs for their Depositions and attend same on 2/10/12-2/11/12 520 miles x .555=$288.60 Tolls 2 x $18= $36.00 Hotel (Wyndham Grand) two nights hotel= $635.24	$959.84
2/10/2012-2/11/2012	**Car Service** – Transport Plaintiffs to and from their Depositions	$1,713.94
2/20/2012	**Court Reporter** – Depositions of all Plaintiffs (Bauer Court Reporting)	$1,110.12
3/13/2012	**Expert** – Bodamer Consulting	$350.00
3/14/2012	**Travel** – Attend Deposition of Steve Sly on 3/14/2012 520 miles x .555=$288.60 Tolls 2 x $18= $36.00 Hotel (Wyndham Grand) one night=$158.02	$482.62
3/14/2012	**Court Reporter** – Deposition of Steve Sly on 3/14/2012 (Ament & Ament Reporters)	$245.44
4/12/2012	**Travel**-Attend Discovery Conference in Pittsburgh on 4/12/12	$406.76

	520 miles x .555=$288.60 Tolls 2 x $18= $36.00 Hotel (Days Inn) one night= $82.16	
5/10/2012	**Court Reporter** – Depositions of George O'Malley and Randy Farkosh (Love Court Reporting)	$1,313.25
6/11/2013	**Travel**-Attend Hearing on Class Certification on 6/11/2013 520 miles x .565=$293.80 Tolls 2 x $18= $36.00 Hotel (Cambia Suites) one night/two rooms (Sanders and Lou Vecchio)=$454.17	$783.97
7/11/2013	**Court Reporter** – Hearing on Class Certification (Pittsburgh Reporting Services)	$193.43
11/04/2013	**Travel**-Attend Status Conference on 11/04/2013 520 miles x .565=$293.80 Tolls 2 x $18= $36.00 Hotel (Red Roof Inn)=$74.89	$404.69
12/18/2013	**Travel**-Attend Status Conference on 12/18/2013 520 miles x .565=$293.80 Tolls 2 x $18= $36.00 No hotel	$329.80
3/19/2014	**Travel**-Attend Status Conference on 2/18/2013 520 miles x .56=$291.20 Tolls 2 x $18= $36.00	$327.20
4/23/2014	**Process Server** – Finley Consulting (serve subpoenas on three interstate pipelines)	$1,513.55
7/06/2014	**Expert** - Bodamer Consulting (retainer)	$10,000.00
7/09/2014	**Platts Pricing**	$700.00
8/12/2014	**Travel**-Attend Status Conference on 8/12/2014 520 miles x .56=$291.20	$410.88

	Tolls 2 x $18= $36.00 Hotel (Red Roof Inn)=$83.68	
11/05/2014-11/06/2014	**Travel** – Attend Deposition of Julia Bodamer – Hotel (Red Roof Inn) one night/two rooms (Sanders and Bodamer)	$157.08
11/06/2014	**Court Reporter** – Deposition of Julia Bodamer	$164.25
2/09/2015	**Expert** - Bodamer Consulting	$1,862.95
2/16/2015	**Copies** – Plaintiffs' Trial Exhibits (Kinkos)	$689.00
2/17/2015	**Federal Express** – Plaintiffs' Trial Exhibits to Judge Mitchell (first a.m. delivery)	$139.38
2/21/2015	**Copies** – Plaintiffs' Trial Exhibits (Kinkos)	$646.62
2/23/2015	**Federal Express** – Plaintiffs' Trial Exhibits to Stacey Jarrell	$99.46
	Expert - Bodamer Consulting	$21,375.20
2/25/2015	**Travel** - Attend Pre-Trial Conference on 2/25/2015 520 miles x .575=$299.00 Tolls 2 x $18= $36.00 Hotel (Red Roof Inn)=$90.86	$425.86
3/1/15-3/5/15	**Travel** - Attend Trial from 3/2/15-3/5/15 520 miles x .575=$299 Tolls 2 x $18= $36.00 Hotel (Wm. Penn.) (3/1-3/4)= $1,128.24	$1,463.24
3/2/15-3/4/15	**Travel -** Hotel for Julia Bodamer, plus parking and meals (Wm Penn)	$477
5/4/2015	**Travel** – Attend Hearing on fee application on 5/4/15 520 miles x .575=$299.00 Tolls 2 x $18= $36.00	$335.00

Total = $49,914.41