

## JOINT PROSECUTION AGREEMENT

This Joint Prosecution Agreement ("Agreement") is made and entered into this <sup>28<sup>th</sup></sup> day of April, 2015, by and between The Dysart Law Firm, P.C., Goldenberg Heller Antognoli & Rowland, P.C. (together, "Dysart/Goldenberg"), and Simmons Hanly Conroy, LLC ("Simmons"), (collectively the "Roxana Counsel Group") which sets out the cooperating attorney agreement for the purpose of litigating and settling the pending cases, *Ford v. Shell Oil Co.*, Cause No. 11-L-000524, filed in the third Judicial Circuit, Madison County, Illinois and *Parko v. Shell Oil Co., et al.*, Case No. 3:12-CV-00336, filed in the United States District Court for the Southern District of Illinois (together, the "Pending Cases"). Any other lawsuits or legal claims now pending or brought in the future, whether by suit or settlement, not part of, or made a part of, the Pending Cases are specifically excluded from this Agreement.

### WITNESSETH:

WHEREAS, All members of the Roxana Counsel Group desire to share and cooperate under the terms and conditions hereinafter set forth, giving as consideration for this Agreement their time, money and expertise in prosecuting the Pending Cases,

NOW, THEREFORE, for and in consideration of the promises and the mutual covenants and agreements set forth herein, the receipt and sufficiency of which are hereby acknowledged, and to induce reliance thereon and in reliance thereon, the parties hereto covenant, agree, stipulate, represent and warrant as follows:

**1. The Co-Counsel Arrangement:**

The Roxana Counsel Group will represent as co-counsel any class of plaintiffs certified or sought to be certified in either or both of the Pending Cases. The members of the Roxana Counsel Group, while separately representing their individual clients, will act as co-counsel in any of the Pending Cases in which both Dysart/Goldenberg, on the one hand, and Simmons on the other, have appeared for at least one plaintiff. The members of the Roxana Counsel Group may associate any of the other firms in the group as co-counsel for any particular plaintiff in either of the Pending Cases by agreement of the parties.

**2. Division of Responsibilities Among Attorneys:**

The members of the Roxana Counsel Group agree to work together on a cooperative basis to prosecute the Pending Cases on an efficient and economical basis and will collectively undertake the following duties:

- a. To coordinate all proceedings, including preparing, structuring, and presenting pretrial and other management-related orders to the courts;
- b. To encourage the full cooperation and efficiency among all counsel;

- c. To create any necessary committees and appoint committee chairs and otherwise delegate responsibilities for specific tasks in a manner to assure the pretrial and trial preparation is conducted effectively, efficiently, and economically.
- d. To delegate work responsibilities and monitor the activities of counsel to assure that schedules are met and unnecessary expenditures of time and expense are avoided;
- e. To act as spokespersons at all court conferences;
- f. To call meetings of themselves and/or other counsel as appropriate and necessary from time to time;
- g. To initiate and conduct settlement negotiations with counsel for the Defendants;
- h. To consult with other members of the Roxana Counsel Group before making any binding representations or arguments to the court in either of the Pending Cases;
- i. To consult with and employ experts, as necessary;
- j. To initiate, coordinate and conduct discovery on behalf of the various Plaintiffs;
- k. To represent the clients of the members of the Roxana Counsel Group, and/or any class certified or proposed to be certified appropriately in any mediation or other settlement negotiations, at trial, and in any appeal of any claims asserted in the Pending Cases.
- l. To perform such other duties as are necessary in connection with the prosecution of the Pending Cases.

The Roxana Counsel Group agrees that each firm will provide for the adequate staffing by attorneys, paralegals, and other personnel necessary for the diligent prosecution of claims related to the Pending Cases. In addition, the senior attorneys working on the case shall be personally informed and active in this litigation and shall be personally available for important court appearances, discovery, and settlement negotiations and for trial of any part of the various cases.

**3. Allocation of Expenses and Attorney's Fees:**

Going forward, the costs associated with the pursuit of either or both of the Pending Cases by the Roxana Counsel Group will be allocated 50% to Simmons and 50% to Dysart/Goldenberg.

Such expenses shall be paid into a separately maintained account created for the purposes of the Pending Cases only, to be managed by one or more members of the Roxana Counsel Group. Payments must be made within 10 days of assessment.

If either of the Pending Cases, pursued by the Roxana Counsel Group results in any award of fees and expenses to any individual or group or class of plaintiffs, whether by way of settlement or trial, the Roxana Counsel Group agrees that all monies that are received will be distributed as follows:

Each party to this agreement will be reimbursed for all of its costs and expenses before there is any distribution of fees. To the extent that costs and expenses are awarded by a court separately from legal fees, pursuant to a class-action settlement or otherwise, the award of costs and expenses shall be divided among the firms in the Roxana Counsel Group in the same ratio as the costs and expenses that were allowed by the court.

The legal fees will be distributed in the following manner:

- (a) To the extent that either or both of the Pending Cases are settled on an individual basis, each law firm will be entitled to the legal fees attributable to the plaintiffs that the particular firm represents by way of a signed written agreement at the time this Agreement is signed by the attorneys of the Roxana Counsel Group. Any legal fees attributable to any plaintiff that is not represented by way of a signed written agreement at the time this Agreement is signed by attorney of the Roxana Counsel Group will be split 50% to Simmons and 50% to Dysart/Goldenberg.
- (b) To the extent that either or both of the Pending Cases are settled on a class basis without any division of the class into subclasses receiving differential awards, and attorneys fees are awarded by a court, the total amount of fees awarded shall be divided as follows: (i) Simmons shall receive a percentage of the fee award calculated as  $x/n + \frac{1}{2}(z/n)$ , where x is the number of class members represented by Simmons pursuant to a signed written agreement, n is the total number of class members, and z is the number of class members not represented by either Simmons or Dysart/Goldenberg pursuant to a written fee agreement; and (ii) Dysart/Goldenberg shall receive a percentage of the fees calculated as  $y/n + \frac{1}{2}(z/n)$ , where y is the number of class members represented by Dysart/Goldenberg pursuant to a signed written agreement, n is the total number of class members, and z is the number of class members not represented by either Simmons or Dysart/Goldenberg pursuant to a written fee agreement.
- (c) To the extent that either or both of the Pending Cases are settled on a class basis pursuant to which differential awards are made to separate subclasses, and attorneys fees are awarded by a court, the total amount of fees awarded shall first be divided in portion to the amount of recovery for each subclass, and each resulting portion of the fees shall be divided as follows: (i) Simmons shall receive a percentage of the fee award calculated as  $x/n + \frac{1}{2}(z/n)$ , where x is the number of subclass members

represented by Simmons pursuant to a signed written agreement, n is the total number of subclass members, and z is the number of subclass members not represented by either Simmons or Dysart/Goldenberg pursuant to a written fee agreement; and (ii) Dysart/Goldenberg shall receive a percentage of the fees calculated as  $y/n + \frac{1}{2}(z/n)$ , where y is the number of subclass members represented by Dysart/Goldenberg pursuant to a signed written agreement, n is the total number of subclass members, and z is the number of subclass members not represented by either Simmons or Dysart/Goldenberg pursuant to a written fee agreement.

- (d) That it is the intent of the parties to this Agreement that the number of plaintiffs that are represented by Simmons and Dysart/Goldenberg by a signed written agreement will be calculated and determined as of the date this Agreement is signed by the Roxana Counsel Group authorized agents.

#### 4. Miscellaneous Provisions:

*Court Conflict with Fee Provisions:* In the event that fees, expenses, and costs are recovered by court award or settlement, then, despite the terms of the court award or settlement, or any attorney fee, cost or expense order or judgment of any court, the amount of any settlement or court award received will be allocated as set forth in this agreement, unless the court award or applicable law explicitly prohibits such an allocation. In such an event, the amount recovered will be allocated in accordance with the court award or as otherwise required by applicable law.

*Joint Prosecution:* All signatories agree to be bound by the joint privileges accorded under this joint prosecution agreement including the attorney-client privilege and work-product doctrine. Nobody associated with the undersigned firms shall take any step to knowingly waive these protections without the consent of all members of the Roxana Counsel Group.

*Professional Liability Insurance Coverage:* Each party shall, at its sole cost and expense, procure and maintain in force professional liability insurance coverage on a claims made basis with an annual aggregate limit of liability of at least three million dollars and shall provide any other party to this Agreement, upon request, with a certificate from their insurer evidencing such coverage.

*Law Governing This Agreement:* This Agreement, and the rights of the parties hereunder, shall be interpreted in accordance with the laws of the State of Illinois.

*Entire Agreement:* This Agreement contains the entire agreement of the parties. No other agreement, statement, or promise made on or before the effective date of the Agreement will be binding on the parties.

*Dispute Resolution:* Although no dispute is anticipated, should a dispute arise among members of the Roxana Counsel Group with regard to the allocation and/or disbursement of costs, expense, fees or any other amounts due, or alleged to be due and owing hereunder or otherwise in connection with these matters, those members of the Roxana Counsel Group agree

to mediate, in good faith, any such disputes before resorting to litigation. The parties to such mediation shall agree to split the cost of such mediation equally and to work together to select a mutually agreeable mediator. If the parties are unable to select a mutually agreeable mediator they hereby agree to mediate any dispute with United States Arbitration and Mediation Association – Midwest.

Any member of the Roxana Counsel Group can withdraw from the group and thus from this agreement with thirty days written notice to the other members of the group.

**AGREED AND ACKNOWLEDGED:**

THE DYSART LAW FIRM, P.C.

By: Christopher Dwyer

Authorized agent for The Dysart Law Firm, P.C.

GOLDENBERG HELLER ANTOGNOLI & ROWLAND, P.C.

By: Michael S. Goldenberg

Authorized agent for Goldenberg Heller Antognoli & Rowland, P.C.

SIMMONS HANLY CONROY, LLC.

By: Thomas J. Hanly

Authorized agent for Simmons Hanly Conroy, LLC.