IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

BRYAN P. SPENCE, individually and as a representative of a class of similarly situated persons, and on behalf of the AMERICAN AIRLINES, INC. 401(K) PLAN and the AMERICAN AIRLINES, INC. 401(K) PLAN FOR PILOTS,	§	
Plaintiffs,	§	Case No. 4:23-cv-00552-O
v.	§	
AMERICAN AIRLINES, INC., and the AMERICAN AIRLINES EMPLOYEE BENEFITS COMMITTEE,	§	
Defendants.	§	

PLAINTIFF'S MOTION FOR ATTORNEYS' FEES, COSTS, AND SERVICE AWARD

Pursuant to 29 U.S.C. § 1132(g)(1), Plaintiff respectfully moves this Court for an order requiring Defendants to pay Plaintiff's reasonable attorneys' fees and a service award to Plaintiff, as set out in the memorandum filed in support of this motion.

A memorandum in support of this motion satisfying the requirements of Local Rule 7.1(d) and accompanying exhibits are filed contemporaneously with this motion.

WHEREFORE, Plaintiff respectfully requests that the Court order Defendants to pay Plaintiff's attorneys' fees and a service award, in the amounts set forth in the memorandum filed in support of this motion.

Dated: November 4, 2025.

Respectfully submitted,

/s/ Andrew B. Stephens

ANDREW B. STEPHENS
Texas Bar No. 24079396
andrew@hackerstephens.com
HEATHER GEBELIN HACKER
Texas Bar No. 24103325
heather@hackerstephens.com
HACKER STEPHENS LLP
108 Wild Basin Rd. South, Suite 250
Austin, Texas 78746
(512) 399-3022 (phone)

REX A. SHARP
Texas Bar No. 18118800
rsharp@midwest-law.com
ISAAC L. DIEL*
idiel@midwest-law.com
HAMMONS P. HEPNER*
hhepner@midwest-law.com
SHARP LAW LLP
4280 West 75th St.
Prairie Village, Kansas 66208
(913) 901-0505

Attorneys for Plaintiff and the Certified Class

*admitted *pro hac vice*

CERTIFICATE OF CONFERENCE

I hereby certify that on October 1, October 6, and October 24, 2025, Plaintiff's counsel conferred with Defendants' counsel Russell Cawyer regarding this motion. Mr. Cawyer indicated that Defendants oppose the motion.

/s/ Andrew B. Stephens
Andrew B. Stephens

CERTIFICATE OF SERVICE

I hereby certify that on November 4, 2025, this document was served through the Court's CM/ECF Document Filing System upon all counsel of record.

/s/ Andrew B. Stephens
Andrew B. Stephens

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

BRYAN P. SPENCE, individually and as a representative of a class of similarly situated persons, and on behalf of the AMERICAN AIRLINES, INC. 401(K) PLAN and the AMERICAN AIRLINES, INC. 401(K) PLAN FOR PILOTS,	§	
Plaintiffs,	§	Case No. 4:23-cv-00552-O
v.	§	
AMERICAN AIRLINES, INC., and the AMERICAN AIRLINES EMPLOYEE BENEFITS COMMITTEE,	§	
Defendants.	§	

PLAINTIFF'S MEMORANDUM IN SUPPORT OF MOTION FOR ATTORNEYS' FEES, COSTS, AND SERVICE AWARD

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

ARGUMENT

ERISA § 502(g)(1) provides a court with discretion to "allow a reasonable attorney's fee and costs of action to either party." 29 U.S.C. § 1132(g)(1).[1] A claimant "must show 'some degree of success on the merits' before a court may award attorney's fees." *Hardt v. Reliance Standard Life Ins. Co.*, 560 U.S. 242, 255 (2010) (quoting *Ruckelshaus v. Sierra Club*, 463 U.S. 680, 694 (1983)). Success means "the court can fairly call the outcome of the litigation some success on the merits without conducting a lengthy inquiry into the question whether a particular party's success was substantial or occurred on a central issue." *Id.* (cleaned up). In doing so, the court may, but is not required to, weigh five factors:

> (1) the degree of the opposing parties' culpability or bad faith;
>
> (2) the ability of the opposing parties to satisfy an award of attorneys' fees;
>
> (3) whether an award of attorneys' fees against the opposing parties would deter other persons acting under similar circumstances;
>
> (4) whether the parties requesting attorneys' fees sought to benefit all participants and beneficiaries of an ERISA plan or to resolve a significant legal question regarding ERISA itself; and
>
> (5) the relative merits of the parties' positions.

Iron Workers Local No. 272 v. Bowen, 624 F.2d 1255, 1266 (5th Cir. 1980) (footnote omitted); *see also Hardt*, 560 U.S. at 254-55 ("[T]hese five factors . . . are not required for channeling a court's discretion when awarding fees. . . .").

[1] "It is well settled that the district court has broad discretion in determining the appropriateness of an award of attorneys' fees," and an award is reviewed "for an abuse of that discretion." *Gibbs v. Gibbs*, 210 F.3d 491, 500 (5th Cir. 2000).

Like the fee-shifting provision of 42 U.S.C. § 1988, "[t]he purpose of this provision is to ensure that competent counsel will be available to help enforce the retirement and pensions rights of participants and beneficiaries of ERISA plans." *Conner v. Mid South Ins. Agency, Inc.*, 943 F. Supp. 663, 665 (W.D.La.1996) (quoting *Chambless v. Masters, Mates & Pilots Pension Plan,* 815 F.2d 869, 872 (2d Cir. 1987)) ("attorney fee provisions should be liberally construed to protect the statutory purpose of vindicating retirement rights, even when small amounts are involved").

I. The Court May Award Plaintiff Attorneys' Fees Under ERISA.

A. Plaintiff was successful on the merits.

Plaintiff had more than "some success" on the merits. *Hardt*, 560 U.S. at 255. He prevailed in proving a breach of fiduciary duty by American Airlines at trial, *see* ECF No. 157, and obtained injunctive relief to prevent further disloyalty by AA in the future, ECF No. 165. Plaintiff's successful efforts on behalf of the Class thus protected the retirement assets of over 100,000 current and former employees of AA. *See* ECF No. 122 at 7; ECF No. 59-1 at 14.

B. The *Bowen* factors support an award of attorneys' fees.

Should the Court look to any of the *Bowen* factors, all of them support an award of fees here.

1. AA's culpability or bad faith

The first *Bowen* factor is the degree of the opposing party's culpability or bad faith. *Schadler v. Anthem Life Ins. Co.,* 2000 WL 134761, *1 (N.D. Tex. Feb.3, 2000). A party's conduct may rise to the level of bad faith where there is a breach of fiduciary duty. *Id.*; *Wright v. Nimmons,* 641 F. Supp. 1391, 1408 (S.D. Tex. 1986). Here, the

Court determined after trial that AA breached its fiduciary duty of loyalty to the Plan participants "by allowing their corporate interests, as well as BlackRock's ESG interests, to influence the management of the plan." ECF No. 157 at 3. And "ERISA's duty of loyalty is 'the highest known to the law.'" *Id.*at 55 (quoting *Bussian v. RJR Nabisco, Inc.*, 223 F.3d 286, 294 (5th Cir. 2000). Further, Ken Menezes, Director of AA's Asset Management Group, "provided false testimony" at deposition and at trial as to whether he received the required quarterly attestations from BlackRock on proxy voting. ECF No. 157 at 60.

2. AA's ability to pay the fees

AA is a Fortune 100 company, and as touted by AA witnesses at trial, AA is the "world's largest airline." Tr. vol. III at 154:11-12. There is no doubt that AA has sufficient assets to pay attorneys' fees here (and most likely paid its own lawyers significantly more than Plaintiff's lawyers are requesting).

3. Deterrent effect of fee award

Where there is no finding of bad faith or culpability, this factor carries less force because there is no behavior to deter. *Phillips v. Mar. Ass'n, I.L.A. Local Pension Plan*, 198 F. Supp. 2d 838, 845 (E.D. Tex. 2002). But because the Court found that there was a breach of fiduciary duty, this factor weighs "heavily in favor of an award of attorneys' fees." *Id.* Additionally, since the Court did not award damages, an award of attorneys' fees here is critical to communicate that companies handling other people's retirement money will not receive a mere slap on the wrist for breaching one of the highest duties known to law. "If the court failed to award reasonable attorney's fees and costs to plaintiffs, it would implicitly be condoning the unreasonable actions

of defendants; this it cannot do." *Id.* (quoting *Freedman v. Texaco Marine Servs., Inc.*, 882 F. Supp. 580, 585 (E.D. Tex. 1995)).

4. Whether Plaintiff sought to benefit all ERISA participants or resolve a significant legal issue

As mentioned above, Plaintiff sought (and won) protection for over 100,000 Plan participants. Additionally, this case was one of the first to deal with the disloyal practice of BlackRock and other asset managers to invest Plan assets with ESG-related goals and not with the exclusive best financial interest of the Plan participants in mind. Commentators have called this case a "landmark case" that "may significantly change the landscape for ERISA fiduciaries." *See* Appx. 007 (Hacker Decl. at ¶ 19).

5. Relative merits of the parties' positions

As discussed above, Plaintiff succeeded in proving a breach of the fiduciary duty of loyalty and succeeded in obtaining injunctive relief on behalf of the class. Even though AA managed to prevail on Plaintiff's prudence claim, it was not a resounding victory nor anything close to a vindication of AA's conduct. As the Court found:

> Notwithstanding this conclusion, the Court would be remiss if it did not remark on the problematic nature of this outcome. It is clear that the "incestuous" nature of the retirement plan industry makes a finding of imprudence essentially impossible in certain situations. By mirroring the prevailing practices of the fiduciaries who set the industry standard alongside BlackRock—even if those practices are not in the best financial interests of a retirement plan—Defendants escape liability under the prudence standard. To be sure, this is a shocking result given that the evidence revealed ESG investing is not in the best financial interests of a retirement plan. But no matter how problematic the outcome, the Court's conclusion on the prudence claim is the result a faithful application of what the law demands. At the end of the day, Defendants oversaw and monitored the Plan consistent with prevailing industry standards, even though the result is due to the incestuous

> industry comprised of powerful repeat players who rig the standard of care to escape fiduciary liability.

ECF No. 157 at 53-54 (footnote omitted).

II. Plaintiff's Attorneys' Fees Are Reasonable.

Once the court concludes that a party is entitled to attorneys' fees under ERISA, it "must utilize the lodestar method to determine the amount to be awarded." *Wegner v. Standard Ins. Co.*, 129 F.3d 814, 822 (5th Cir. 1997). Under the first step of this method, the district court must determine the reasonable number of hours expended on the litigation and the reasonable hourly rates for the participating attorneys and then multiply the two figures together to arrive at the "lodestar." *Louisiana Power & Light Co. v. Kellstrom,* 50 F.3d 319, 324 (5th Cir. 1995); *Forbush v. J.C. Penney Co.,* 98 F.3d 817, 821 (5th Cir. 1996). At step two, the court exercises its broad discretion to determine whether the lodestar should be adjusted upward or downward, taking into consideration the dozen factors set forth in *Johnson v. Georgia Highway Express,* 488 F.2d 714, 717–19 (5th Cir. 1974).

To the extent that Defendants dispute that the modest number of hours expended by Class Counsel (as explained below) are reasonable, or dispute the reasonableness of the hourly rates requested, Class Counsel has served discovery on Defendants to obtain defense counsel's hourly rates and hours expended on the case. Class Counsel suspects that defense counsel expended many more hours at an hourly rate higher than the rates requested by Class Counsel, and given that the Defendants lost, an argument that lesser hours/rates are unreasonable is unjustified. Parties "should make a conscientious effort, where a fee award is to be made, to resolve any differences," and agreement where possible should be "encourage[d]." *Blum v. Stenson*, 465 U.S. 886, 902 at n. 19 (1984).

A. Class Counsel's hours are reasonable.

To calculate the reasonable number of hours expended, courts determine whether the total number of hours claimed are reasonable and whether specific hours claimed are reasonably expended. *League of United Latin Am. Citizens No. 4552 v. Roscoe Indep. Sch. Dist.*, 119 F.3d 1228, 1232 (5th Cir. 1997). Contemporaneous billing records are acceptable documentation for determining reasonable hours. *Bode v. United States*, 919 F.2d 1044, 1047 (5th Cir. 1990). And counsel's sworn declarations based on such billing records may also alone "provide[] the Court with enough facts to assess the work performed and its reasonableness, including the lawyers' billing judgment under the circumstances." *Cf. Advanced Physicians, S.C. v. Connecticut Gen. Life Ins. Co.*, No. 3:16-CV-02355-G-BT, 2021 WL 6428370, at *5 (N.D. Tex. Dec. 17, 2021) (citing *Smith & Fuller, P.A. v. Cooper Tire & Rubber Co.*, 685 F.3d 486, 491 (5th Cir. 2012) (in context of awarding fees under Rule 37, "[t]he affidavits of counsel may alone be sufficient proof . . . to establish the amount of fees to be awarded"); *Passmore v. Baylor Health Care Sys.*, 2016 WL 8578058, at *2 (N.D. Tex. Jan. 5, 2016) (under Texas law, "affidavit testimony of an attorney, without evidence of billing records, is legally sufficient to support an award of attorneys' fees")). Where counsel's declarations are sufficient, "the Court is not required to expend precious judicial resources on a line-by-line audit of contemporaneous billing records." *Id.* As the Supreme Court has repeatedly stated, a "request for attorneys' fees should not result in a second major litigation." *Blum*, 465 U.S. at 902 n. 19 (citation omitted).[2]

[2] If the Court prefers to review billing records, Class Counsel will of course submit them to the Court.

1. Total hours

In total, Class Counsel expended 6,525.3 hours litigating this matter, as set forth in the declarations of Class Counsel. *See* Appx. 005 (Hacker Decl.) at ¶ 12; Appx. 034-35 (Stephens Decl.) at ¶¶ 10,13; Appx. 069 (Sharp Decl.) at ¶ 11. That amount is reasonable given the complex and novel nature of the litigation and the fact that two small firms litigated the matter against a large global law firm and one of the best ERISA defense groups in the country. *See* Appx. 004 (Hacker Decl.) at ¶ 8. Nevertheless, as explained below, in the exercise of billing judgment, Class Counsel has reduced the total number of hours by 666.2—or more than 10%—leaving a total of **5,859.1** hours. *See* Appx. 035 (Stephens Decl.) at ¶¶ 12-14; Appx. 070 (Sharp Decl.) at ¶¶ 13-14.

2. Billing judgment

To show the reasonableness of the hours billed, counsel seeking fees must exercise "billing judgment," which requires "documentation of the hours charged and of the hours written off as unproductive, excessive, or redundant." *Saizan v. Delta Concrete Prods.*, 448 F.3d 795, 799 (5th Cir. 2006). Here, the elimination of 666.2 hours—documented in declarations from Class Counsel—demonstrates that Class Counsel exercised billing judgment. In total, Class Counsel cut 666.2 hours or more than 10% of their total hours. Courts consistently find that reductions of this nature satisfy billing judgment. *See, e.g., Jolie v. Nick's Mgmt., Inc.*, No. 3:23-CV-00481-B-BT, 2024 WL 5301769, at *10–11 (N.D. Tex. Nov. 5, 2024), *report and recommendation adopted*, No. 3:23-CV-0481-B(BT), 2025 WL 50602 (N.D. Tex. Jan. 8, 2025); *Miller v. Raytheon Co.*, No. 3:09-CV-440-O, 2013 WL 6838302, at *11 (N.D. Tex. Dec. 27, 2013) (O'Connor, J.); *Alto-Shaam, Inc. v. Manitowoc Co.*, No. 7:09-CV-018-O, 2012 WL 12978015, at *8 (N.D. Tex. Feb. 2, 2012) (O'Connor, J.). Accordingly,

the Court should find that Class Counsel exercised billing judgment and reasonably expended **5,859.1** hours in this case.

B. Counsel's hourly rates are reasonable.

"[R]easonable" hourly rates "are to be calculated according to the prevailing market rates in the relevant community." *McClain v. Lufkin Indus., Inc.*, 649 F.3d 374, 381 (5th Cir. 2011) (quoting *Blum*, 465 U.S. at 895). Generally, the "relevant market for purposes of determining the prevailing rate to be paid in a fee award is the community in which the district court sits." *Tollett v. City of Kemah*, 285 F.3d 357, 368 (5th Cir. 2002) (quoting *Scham v. Dist. Cts. Trying Crim. Cases*, 148 F.3d 554, 558 (5th Cir. 1998) (abrogated on other grounds)). Courts award rates "based on the prevailing community standards for attorneys of similar experience in similar cases," *Miller*, 2013 WL 6838302, at *3. In such a case, this Court has said that it "will look to the prevailing market rates in Dallas." *Id.* at *7. In addition, "[t]he relevant market ... may extend beyond the local geographic community." *Sierra Club v. Energy Future Holdings Corp.*, No. W-12-CV-108, 2014 WL 12690022, at *6 (W.D. Tex. Aug. 29, 2014) (citation omitted). "The idea that a firm should be restricted to the hourly rate typical in the locale of the case is unduly parochial particularly in this age of national and regional law firms working on larger more complex ... cases of more than local import." *Id.* (citation omitted).

"Generally, the reasonable hourly rate is established through affidavits submitted by other attorneys practicing in the community." *Id.* at *8. Applicants may also establish reasonable hourly rates "by directing the district court to fee awards in the same district." *Id.* It is also "well-established that the Court may use its own expertise and judgment to independently assess the hourly rates charged for

attorneys' services." *SortiumUSA, LLC v. Hunger*, 2015 WL 179025, at *5 (N.D. Tex. Jan. 14, 2015).

Plaintiff requests the following rates based on market rates in Dallas-Fort Worth:

Attorney	Class	Rate
Rex A. Sharp	1985	$1,375.00
Isaac L. Diel	1989	$1,330.00
Heather G. Hacker	2005	$1,250.00
Andrew B. Stephens	2007	$1,250.00
Ryan C. Hudson	2005	$1210.00
Nathan A. Kakuzu	2017	$850.00
Hammons P. Hepner	2021	$750.00

The declarations submitted here establish that Class Counsel's requested rates are reasonable. Further, though this case was filed in 2023 and tried in 2024, Class Counsel may charge current (2025) billing rates for their work. *Missouri v. Jenkins*, 491 U.S. 274, 283-84 (1989); *see also In re Enron Corp. Sec., Derivative & ERISA Litig. v. Enron Corp.*, 586 F. Supp. 2d 732, 779 (S.D. Tex. 2008) ("To compensate for delay in receiving fees, counsel have properly used their current billing rates."). Past awards in this district, when brought to 2025 rates according to annual fee increases, further support the rates requested here.

First, Class Counsel's proposed rates are supported by the declarations. Class Counsel are skilled and experienced class action litigators who graduated from top

schools and have litigated many significant cases in their careers. *See* Appx. 002-3 (Hacker Decl.) at ¶¶ 3-6, Appx. 033-34 (Stephens Decl.) at ¶¶ 3-7, Appx. 063-68(Sharp Decl.) at ¶¶ 2-6. Randall Miller, an attorney with Munsch Hardt Kopf & Hart, P.C. in Dallas, states that the proposed rates are consistent with what other attorneys with similar skill and experience to Class Counsel would charge in complex litigation in the Dallas-Fort Worth area. *See* Appx. 078-79 (Miller Decl.) at ¶¶ 9-13. Mr. Miller is also personally familiar with the work and reputation of Hacker Stephens LLP. *Id.* at ¶ 7. Mr. Miller stated that his hourly rate when he was a partner at Kirkland & Ellis LLP two years ago was higher than what Class Counsel is requesting here, even though Rex Sharp, Ike Diel, Heather Hacker, and Andrew Stephens are more experienced. *Id.* at ¶ 13.

Second, comparable fee awards in this District confirm the reasonableness of Class Counsel's hourly rates when documented increases in rates over time are taken into account. "It is not unreasonable to conclude that counsel's rates would increase over time, due to inflation and, perhaps, counsel's reputation in the field . . ." *Robinson v. Linder*, No. 08-cv-1, 2009 WL 10708332, at *5 (E.D. Tex. Mar. 17, 2009). Thus, if courts in this District found these rates reasonable several years ago, it follows that Class Counsel's equivalent rates here are also reasonable. The rates discussed below are summarized in this chart, which also shows that the average equivalent 2025 rate awarded in these other cases is $1,330/hour:

NDTX Attorney Fee Awards at 2025 Rates (using Thomson Reuters annual rate increases)				
NDTX Case	**Law Firm**	**Billing Rate Awarded**	**Billing Rate Year**	**2025 Billing Rate**
Alto-Shaam, Inc. v. Manitowoc Co., No. 7:09-CV-018-O, 2012 WL 12978015, at *6 (N.D. Tex. Feb. 2, 2012) (O'Connor, J.)	Baker Botts LLP	$725	2012	**$1,414**
Hoffman v. L & M Arts, No. 3:10–CV–0953–D, 2015 WL 3999171, at *3 (N.D. Tex. July 1, 2015)	Wilkie Farr & Gallagher LLP	$810	2013	**$1,526**
Hill v. Schilling, No. 3:07-CV-2020-L, 2022 WL 1321548, at *5 (N.D. Tex. May 3, 2022)	Locke Lord LLP	$830	2019	**$1,261**
Advanced Physicians, S.C. v. Connecticut Gen. Life Ins. Co., No. 16-cv-02355, 2021 WL 6428370, at *6 (N.D. Tex. Dec. 17, 2021)	Akin Gump Strauss Hauer & Feld LLP	$862	2021	**$1,170**
Franciscan Alliance, Inc., v. Becerra, 681 F. Supp. 3d 631, 643-45 (N.D. Tex. 2023) (O'Connor, J.)	Becket Fund	$1,000	2022	**$1,277**
			Average Rate =	**$1,330**

See Appx. 036-38 (Stephens Decl.) at ¶¶ 19-21. In 2023, this Court awarded counsel from the Becket Fund for Religious Liberty (with similar experience to Class Counsel from Hacker Stephens LLP, *see* Appx. 002-3 (Hacker Decl.) at ¶ 6) a 2022 rate of $1,000 per hour in a RFRA case. *Franciscan Alliance, Inc., v. Becerra*, 681 F. Supp. 3d 631, 643-45 (N.D. Tex. 2023) (O'Connor, J.); *see also id.*, Mem. Supp. Mot. for Atty. Fees, ECF No. 224 at 20, 21. This Court found that awarding a fee based on Washington, D.C. rates was appropriate in that case given the subject matter and the non-profit plaintiff, but the Dallas-Fort Worth rates counsel had proposed and justified by affidavit were only slightly lower. *Id.* A Dallas declarant in that case

attested in 2022 that Becket Fund's proposed Dallas rates were "lower than the rates my two prior firms [Gibson, Dunn & Crutcher LLP and Vinson & Elkins LLP] and other firms with which I am familiar would charge their clients for attorneys of comparable seniority and expertise on a similar matter," and noted that he was also "aware of comparable practitioners that charge significantly higher rates, including between $1,085-$1,895/hour for law firm partners and between $625-$1,195/hour for associates." *Id.*, ECF No. 224-3, ¶¶ 20-21. Adjusting the 2022 rate of $1,000 per hour to account for fee increases over the last three years based on the most recent Thomson Reuters survey (*see* Appx. 036-38 (Stephens Decl.) at ¶¶ 19-21), results in an equivalent 2025 rate of $1,277.

In a trusts-and-estates fee petition decided in 2022, Locke Lord attorneys requested rates up to $830/hour for work done from April 2019 to March 2020. *Hill v. Schilling*, No. 3:07-CV-2020-L, 2022 WL 1321548, at *5 (N.D. Tex. May 3, 2022). The district court took judicial notice of the hourly rates for attorneys at Winston & Strawn and found that an attorney who graduated in 2013 charged a standard rate of $860/hour and had recently raised his rate to $935/hour in 2022. *Id.* at *5. The court found that this evidence—along with the experience and reputation of the attorneys involved—supported the conclusion "that Locke Lord's rates are comparable to what other similar firms are charging for legal work in the Northern District of Texas." *Id.* at *6. The court therefore held that a requested rate of $830 was reasonable. *Id.* The 2025 rate equivalent is $1,261/hour. Appx. 038 (Stephens Decl.) at ¶ 21. ERISA cases are no different. In *Advanced Physicians, S.C. v.*

Connecticut Gen. Life Ins. Co., No. 16-cv-02355, 2021 WL 6428370, at *6 (N.D. Tex. Dec. 17, 2021), the district court awarded rates up to $862/hour for attorneys in Akin Gump Strauss Hauer & Feld LLP's Dallas office to defendants in an ERISA action. In 2025, that rate is equivalent to $1,170/hour. Appx. 038 (Stephens Decl.) at ¶ 21. Older cases also support Class Counsel's rates. In a fee petition involving work done over a decade ago, the court held that a rate of $810/hour for attorneys from Willkie Farr & Gallagher LLP was reasonable. *Hoffman v. L & M Arts*, No. 3:10–CV–0953–D, 2015 WL 3999171, at *3 (N.D. Tex. July 1, 2015). Using data from 2013, the court concluded that $810/hour was reasonable in light of "the nature and complexity of this litigation." *Id*. The rate awarded in 2012 in *Hoffman* is equivalent to $1,526/hour in 2025. Appx. 038 (Stephens Decl.) at ¶ 21. And in a case involving work completed in 2012, this Court found that a rate of $725/hour was reasonable for attorneys from Baker Botts LLP. *Alto-Shaam*, 2012 WL 12978015, at *6 (O'Connor, J.). Based on the Thomson Reuters survey, the 2012 rate awarded in*Alto-Shaam* is equivalent to $1,414/hour in 2025. Appx. 038 (Stephens Decl.) at ¶ 21. The rates at large international firms (like the one AA retained to represent them here) are good representations of what a reasonable rate is for Class Counsel, as Class Counsel has similar credentials and expertise as the lawyers at these firms. Appx. 002-3 (Hacker Decl.) at ¶¶ 3-6, Appx. 033-34 (Stephens Decl.) at ¶¶ 3-7, Appx. 063-68 (Sharp Decl.) at ¶¶ 2-6. Indeed, Class Counsel formerly worked at similar firms before entering government service or starting their own firms. Appx. 034 (Stephens Decl.) at ¶ 7, Appx. 063 (Sharp Decl.) at ¶ 2. And Class Counsel also often successfully litigates

against these types of firms, even with far less resources, just as they did in this case. Appx. 003 (Hacker Decl.) at ¶ 5. This case is the best evidence national law firm rates are reasonable for HSLLP and Sharp Law. Here, a two-lawyer firm that had never had an ERISA case before this one, along with Sharp Law, successfully litigated this case against O'Melveny & Myers LLP's ERISA practice group, which has been ranked by Chambers and Partners as one of the best ERISA groups in the country for 20 years. *See* Appx. 004 (Hacker Decl.) at ¶ 8. Successful litigation against the most formidable (and expensive) opponents by equally credentialed lawyers warrants a similar rate.

C. The lodestar amount is reasonable.

Based on the hours reasonably expended in this litigation and prevailing market rates in the Northern District of Texas produces a lodestar amount of **$6,589,800.50**. *See* Appx. 009 (Hacker Decl.) at ¶ 27; Appx. 040 (Stephens Decl.) at ¶ 24; Appx. 070 (Sharp Decl.) at ¶ 14. As explained above, this amount is reasonable.

D. Application of the *Johnson* factors warrants an enhancement.

After calculating the lodestar, courts move to the second stage and consider whether to enhance or reduce the award based on unaccounted *Johnson* factors. The *Johnson* factors are: (1) the time and labor required; (2) the novelty and difficulty of the questions; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the "undesirability" of the case; (11) the nature and length of the professional relationship with the client;

and (12) awards in similar cases. *See Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974).

When considering the *Johnson* factors, this Court "necessarily has discretion" to grant an enhancement. *Villas at Parkside Partners v. City of Farmers Branch*, No. 08-cv-1551, 2010 WL 2730629, at *4 (N.D. Tex. July 9, 2010) (quoting *Hensley v. Eckerhart,* 461 U.S. 424, 437 (1983)). And courts in the Northern District of Texas and the Fifth Circuit have granted enhancements of 20-33% when a plaintiff achieved exceptional results and the enhancement was needed to account for the true market value of plaintiff's counsel's services, including in ERISA cases. *See Cloud v. Bert Bell/Pete Rozelle NFL Player Ret. Plan*, No. 20-cv-1277, 2022 WL 2805527, at *7 (N.D. Tex. July 18, 2022), *rev'd on other grounds*, 95 F.4th Cir. (5th Cir. 2024) (20% enhancement in ERISA case); *Shipes v. Trinity Indus.*, 46 F.3d 67 (5th Cir. 1995) (affirming 33% enhancement). Based on the factors below, Class Counsel requests a **20% enhancement**.

- **Novelty and difficulty of the questions involved:** As discussed above with respect to the optional *Bowen* factors, this case was acknowledged to be novel and groundbreaking, with potential implications for the entire 401(k) industry.[3] It was the first ERISA case involving proxy voting, and it was also the first ERISA case dealing with ESG investing. *See* Appx. 007 (Hacker Decl.) at ¶ 19; Appx. 012-31. Class Counsel "should be compensated for accepting the challenge" to undertake new or difficult issues, especially ones with impacts as far reaching as those presented by

[3] For instance, commentators noted that the Court's findings of fact and conclusions of law "marks the first time that a federal judge has written an on-the-merits decision on the controversial topic of ESG and the duties of retirement plan fiduciaries under ERISA," and "has important ramifications for all sponsors of 401(k) plans. Joshua A. Lichtenstein, et al., *Practical Takeaways from* Spence v. American Airlines, Inc., *for ERISA Plan Fiduciaries*, Ropes & Gray LLP Alerts (Jan. 15, 2025), https://www.ropesgray.com/en/insights/alerts/2025/01/practical-takeaways-from-spence-v-american-airlines-inc-for-erisa-plan-fiduciaries.

this case. *Johnson*, 488 F.2d at 718. Cases involving novel theories are also difficult to secure contingency-based counsel for, and the politically charged issue of ESG investing would have also dissuaded most plaintiff-side class action lawyers from attempting the case.

- **Skill requisite to perform the legal service properly:** Class Counsel are skilled litigators with extensive experience in complex litigation and class actions. *See* Appx. 002-3 (Hacker Decl.) at ¶¶ 3-6, Appx. 033-34 (Stephens Decl.) at ¶¶ 3-7, Appx. 063-68(Sharp Decl.) at ¶¶ 2-6, *see also* ECF No. 59-3; ECF No. 122 at 23. Their expertise was necessary to adequately pursue Plaintiff's novel and difficult claims. And because Class Counsel was experienced and able, the number of hours expended to win was lower than it would have taken less experienced or able lawyers (and was likely far less than then number of hours expended by AA's lawyers), which means that the lodestar does not adequately reflect the value of the hours expended by Class Counsel. *See Phillips*, 198 F. Supp. 2d at 847 (citing *Conner*, 943 F. Supp. at 669).

- **Preclusion of other employment:** Hacker Stephens LLP could not take on additional work due to the burdens of litigating this case on behalf of the class, against a Fortune 100 company with AmLaw 100 defense attorneys and unlimited resources, including insurance to cover their legal bills. Hacker Stephens LLP is a small, two-person firm, and the number of hours of work that this case demanded limited the firm's ability to take on additional cases from June 2023 (after the case was filed) through July 2024 (after trial and post-trial briefing). *See* Appx. 005 (Hacker Decl.) at ¶ 14. In particular, Mr. Stephens spent the majority of his

working time on this case while it was being actively litigated. *See* Appx. 034-35 (Stephens Decl.) at ¶ 10.

- **The customary fee:** The fee for class action attorneys is generally one-third to 40% contingent fee, based as a percentage of the settlement fund, *see, e.g.,* Order Granting Plaintiffs' Motion for Attorney Fees, Expenses, and Service Awards, *Main v. American Airlines*, No. 4:16-cv-00473-O (N.D. Tex. Feb. 21, 2018), ECF No. 138; Order Granting Plaintiffs' Motion for an Award of Attorneys' Fees, *In re 2014 Radioshack ERISA Litig.*, 4:14-cv-00959-O (N.D. Tex. Jul. 20, 2016), ECF No. 194. Class Counsel can typically recover their expenses as part of a common fund settlement as well, and those expenses (like those here) can be substantial. *See* pp. 17-19 *infra.* And ERISA class actions rarely go to trial.[4] *See* Appx. 007-8 (Hacker Decl.) at ¶ 20.

- **Whether the fee is fixed or contingent:** Class Counsel took this case on a contingent basis. Appx. 004 (Hacker Decl.) at ¶ 7; Appx. 034 (Stephens Decl.) at ¶ 8; Appx. 069 (Sharp Decl.) at ¶ 9. They invested thousands of hours and hundreds of thousands of dollars in expenses into the case "with no guarantee" those hours would ever be compensated or that those funds "would ever be reimbursed." *Phillips*, 198 F. Supp. 2d at 848 (citing *Garza v. Sporting Goods Props., Inc.*, No. CIV. A. SA-93-CA-108, 1996 WL 56247, at *32 (W.D. Tex. Feb. 6, 1996) (financial burden on counsel who advanced tens of thousands in expenses supports multiplier to lodestar)). In total, Class Counsel advanced $ 664,900.78 in expenses to litigate this case. Appx. 069 (Sharp Decl.) at ¶ 10, Appx. 035 (Stephens Decl.) at ¶ 15.

[4] Only one percent of *all* civil cases filed in federal court are resolved by trial. Jeffrey Q. Smith and Grant R. MacQueen, *Going, Going, But Not Quite Gone: Trials Continue to Decline in Federal and State Courts. Does it Matter?*, 101 Judicature 27 (2017), https://judicature.duke.edu/articles/going-going-but-not-quite-gone-trials-continue-to-decline-in-federal-and-state-courts-does-it-matter/.

- **Undesirability of the case:** This factor is meant to encourage competent counsel to represent plaintiffs in matters that affect important individual rights. *Johnson,* 488 F.2d at 718. "Clearly, it would be difficult to get competent lawyers to take on extensive ERISA litigation and pursue it over the course of several years if they were not compensated in a manner commensurate with the task and the risk. This case involved the risk of no recovery." *Phillips*, 198 F. Supp. 2d at 848. At the same time, this case also vindicated important rights for many people, and that would have been impossible had Class Counsel not decided to take on this case. But because of the risk of recovering nothing, especially in this new area of law, and against a large Texas corporation that could otherwise potentially be the source of business, precious few law firms would have been willing to take on the risk that Class Counsel did in order to vindicate the rights of individuals otherwise unlikely to have the resources to hold AA to account for their breach of fiduciary duty.

- **Awards in similar cases:** This case may be the only ERISA class action by 401(k) plan participants for breach of fiduciary duty that ever went to trial in this district. *See* Appx. 007-8 (Hacker Decl.) at ¶ 20. Of the ERISA cases filed in this district in the last decade, most cases were either dismissed by plaintiffs or settled after a motion to dismiss was ruled upon. And ironically, counsel that only partially litigate a case and settle it can recover *more* in fees, and all their expenses, than counsel, like Class Counsel here, who litigate a case successfully through trial and request fees through ERISA's fee-shifting statute, warranting an enhancement.

Class Counsel incurred expenses of $664,900.78 yet cannot recover them under ERISA. *See* Appx. 035 (Stephens Decl.) at ¶ 15; Appx. 069 (Sharp Decl.) at ¶ 10.[5]

For example, *Main v. American Airlines*, No. 4:16-cv-00473-O (N.D. Tex. filed Apr. 15, 2016), was also an ERISA class action filed in the Fort Worth Division against American Airlines for violating their fiduciary duties of loyalty and prudence. 248 F. Supp. 3d 786, 789 (N.D. Tex. 2017). The plaintiffs alleged that American breached these duties by including certain mutual funds in the 401(k) plan that were more costly and underperformed compared to similar alternatives, which is a less novel theory of liability than that presented here. *Id.* Defense counsel was similar: Fort Worth counsel Kelly Hart & Hallman (Dee Kelly, Jr.) and O'Melveny & Myers' New York-based ERISA department (Brian Boyle, Shannon Barrett, and Jeffrey Kopczynski).[6] *Id. Main* settled after this Court denied AA's motion to dismiss but before a class was certified. *See id.*, Order Granting Plaintiffs' Motion for Attorney Fees, Expenses, and Service Awards, (N.D. Tex. Feb. 21, 2018), ECF No. 138.

Though this was a settlement, the Court was still required to ensure the amount of attorneys' fees was reasonable. Plaintiffs' counsel attested that they had expended approximately 2,500 hours of time on the matter (which included briefing a motion to dismiss, motion for leave to amend the complaint, and briefing a motion for class certification as well as discovery and depositions, reviewing initial drafts of expert reports, and mediation). *See id.,* Decl. of Kai H. Richter in Support of Plaintiffs' Motion for Approval of Attorneys' Fees, Expenses, and Service Awards, ECF No. 131-

[5] The Fifth Circuit has held that an award of costs in an ERISA case is limited to those listed in 28 U.S.C. § 1920. *Cook Children's Med. Ctr. v. New England PPO Plan of Gen. Consol. Mgmt., Inc.*, 491 F.3d 266, 275–76 (5th Cir. 2007), *cert. denied*, 552 U.S. 1180 (2008) (holding that mediation fees cannot be awarded as costs in an ERISA suit because they are "not explicitly authorized by § 1920.").

[6] American Airlines was also represented by attorneys in Jackson Walker LLP's Dallas office.

1 at 12.[7] The Court approved attorneys' fees in the amount of $6,600,000.00, which amounted to 30% of the settlement fund, as "reasonable and appropriate." *Id.*, Order Granting Order Granting Plaintiffs' Motion for Attorney Fees, Expenses, and Service Awards, ECF No. 138. That works out to approximately $2,640 per hour in 2018. Present value of the *Main* attorneys' fees award and hourly rate are $10,502,500 and $4,201 per hour. Appx. 039 (Stephens Decl.) at ¶ 22.

Further, on top of the fees above, this Court approved an award of litigation expenses in the amount of $428,375.21. *Id.*, Order Granting Order Granting Plaintiffs' Motion for Attorney Fees, Expenses, and Service Awards, ECF No. 138. Thus, this Court approved a total award of $7,028,375.21 in fees and expenses to plaintiffs' counsel in *Main* (not including an additional award of $163,604 for settlement administration expenses), in a case where a class was not yet certified and had not gone to trial or even summary judgment. *Id.* The fact that Class Counsel here achieved success by committing more work and winning an unprecedented trial yet is not eligible for such high rates under lodestar analysis, plus cannot recover the substantial expenses of the action, warrants a 20% enhancement to fully compensate counsel and more accurately reflect the value of their services. Thus, the total amount of fees requested by Class Counsel is **$7,907,760.60** (lodestar plus enhancement).

III. Plaintiff May Recover Costs Under ERISA § 502(g)(1).

ERISA § 502(g)(1) also allows the Court to award the "costs of action" to Plaintiff. 29 U.S.C. § 1132(g)(1). A bill of costs has also been filed separately reflecting

[7] Plaintiffs' counsel did not submit lodestar information, such as a proposed reasonable hourly rate, and did not itemize the number of hours spent by each timekeeper. *See id.,* Decl. of Kai H. Richter in Support of Plaintiffs' Motion for Approval of Attorneys' Fees, Expenses, and Service Awards, ECF No. 131-1.

all allowable costs of the action under 28 U.S.C. § 1920.[8] The total costs of this action are **$41,684.29**.

IV. Plaintiff Is Also Entitled to a Service Award for the Time and Risk Expended to Act as the Representative of the Certified Class.

Plaintiff further requests a modest service award of **$15,000.00**. "Service awards to class representatives are permissible where they are fair and reasonable." *Lee v. Metrocare Servs.*, No. 3:13-CV-2349-O, 2015 WL 13729679, at *4 (N.D. Tex. July 1, 2015) (O'Connor, J.) (citing *In re Heartland Payment Sys.*, 851 F. Supp. 2d 1040, 1089 (S.D. Tex. 2012)). "Courts have awarded incentive payments to class representatives to compensate them for activities including participation in the settlement process, oral and written discovery, depositions, and hearings." *Id.*; *see also Purdie v. Ace Cash Express, Inc.*, No. 3:01-cv-1754-L, 2003 WL 22976611, at *7 (N.D. Tex. Dec. 11, 2003) (approving incentive payments as compensation to lead plaintiffs for responding to discovery and evaluating settlement proposals among other things); *In re Lease Oil Antitrust Litig.*, 186 F.R.D. 403, 449 (S.D. Tex. 1999) (approving incentive awards where class representatives produced their personal records, appeared for lengthy depositions, and attended several hearings).

> When analyzing the propriety of a service award, courts have considered: 1) the risk to the class representative in commencing suit, both financial and otherwise; 2) the notoriety and personal difficulties encountered by the class representative; 3) the amount of time and effort spent by the class representative; 4) the duration of the litigation; and 5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation.

Id. (quoting *Humphrey v. United Way of Tex. Gulf Coast*, 802 F. Supp. 2d 847, 869 (S.D. Tex. 2011)). "A similar test applied in *In re Heartland* considers (1) actions the

[8] *Cook Children's Med. Ctr.*, 491 F.3d at 275–76.

plaintiff took to protect the interests of the class; (2) the degree to which the class benefitted from those actions; and (3) the amount of time and effort the plaintiff expended in pursuing the litigation." *Id.* (quoting *In re Heartland*, 851 F. Supp. 2d at 1089).

A modest award for Mr. Spence is justified under the factors above, especially because any such award will not come out of a common fund to be shared by all class members but would be paid by Defendants directly along with attorneys' fees. As Mr. Spence explains in his Declaration, as a current employee of AA, Mr. Spence understood that he was taking a risk that could jeopardize his job as a pilot with a company he otherwise likes very much (excepting their actions at issue in this case). Appx. 089 (Spence Decl.) at ¶ 7; *see also Beesley v. Int'l Paper Co.*, No. 06-703, 2014 WL 375432, at *4 (S.D. Ill. Jan. 31, 2014) ("ERISA litigation against an employee's current or former employer carries unique risks and fortitude, including alienation from employers or peers."); *Cates v. Trustees of Columbia Univ.*, No. 16-6524, Doc. 467, at *16 (S.D.N.Y. Oct. 18, 2021) (recognizing that the plaintiffs in a similar ERISA action "risked their reputations and alienation from employers in bringing an action against a prominent [university] in their community" (cleaned up)).

Mr. Spence took his responsibility as Class Representative very seriously and devoted an estimated 100 hours to the case. Appx. 088 (Spence Decl.) at ¶ 6. The burden of this responsibility also fell solely on him, as he was the only Class Representative. Mr. Spence's participation came at a personal cost to him and his family, as he is the father of very young children. Appx. 089 (Spence Decl.) at ¶ 7. He was required to produce personal documents at the request of AA, he prepared for and sat for a seven-hour deposition at AA's request, he prepared for and provided

testimony at trial, and he attended the entire trial, taking notes and observing the proceedings. Appx. 088 (Spence Decl.) at ¶¶ 4-6. Mr. Spence is aware of online criticism of him for bringing the lawsuit. Appx. 089 (Spence Decl.) at ¶ 8. But he nevertheless sought to vindicate the rights of the Plan Participants to have their retirement assets managed free of any conflicts of interest and in their sole financial best interest. Mr. Spence undertook this even though he did not stand to gain a large amount of money or other benefit.[9] Ex. Appx. 089 (Spence Decl.) at ¶ 7. And through his diligent efforts along with Class Counsel, he and the rest of the Class have now gained protection from similar violation of their rights under ERISA in the future. Further, as explained elsewhere, because of the cutting-edge nature of this case, Mr. Spence's efforts have also set new precedent and may provide protection for the participants in other ERISA plans against similar violations.

Further, the amount requested is modest and does not reduce any class members' recovery. In other ERISA cases, class representatives have been awarded between $10,000 and $25,000. *See, e.g., Kruger v. Novant Health, Inc.*, 2016 WL 67696, at *6 (M.D.N.C. Sept. 29, 2016) (approving $25,000 service awards to named plaintiffs); *Krueger v. Ameriprise Fin., Inc.*, 2015 WL 4246879, at *3 (D. Minn. Jul. 13, 2015) (same); *Spano v. Boeing Co.*, 2016 WL 3791123, at *4 (S.D. Ill. Mar. 31, 2016) (approving service awards between $10,000 and $25,000 based on the extent of involvement of each plaintiff); *Abbott v. Lockheed Martin*, 2015 WL 4398475, at *4 (S.D. Ill. Jul. 17, 2015) (same); *accord In re Marsh ERISA Litig.*, 265 F.R.D. 128, 150 (S.D.N.Y. 2010) (approving $15,000 service awards in ERISA action involving company stock plan). Courts in the Fifth Circuit have approved similar service or

[9] For instance, under the modest damages Plaintiff requested, Mr. Spence individually would have only stood to receive around $160 because the class of Plan Participants was so large.

incentive awards for named plaintiffs. *See, e.g.,* Order Granting Plaintiffs' Motion for Attorney Fees, Expenses, and Service Awards, *Main*, ECF No. 138 (approving $10,000 service award to each of three class representatives as "justified under the facts of this case and consistent with applicable legal authorities"); *Camp v. Progressive Corp.*, No. Civ. A. 01–2680, 2004 WL 2149079, at *7 (E.D. La. Sept. 23, 2004) (approving award of $10,000 to named plaintiff); *In re Lease Oil Antitrust Litig. (No. II)*, 186 F.R.D. 403, 449 (S.D. Tex. 1999) (approving awards of up to $10,000 per class representative).

CONCLUSION

Plaintiff respectfully requests that the Court grant Plaintiff's motion for attorneys' fees of **$7,907,760.60** ($6,589,800.50 plus 20% enhancement of $1,317,960.10), costs of **$41,684.29**, and a service award for Plaintiff of **$15,000.00**.

Dated: November 4, 2025.

Respectfully submitted,

/s/ Andrew B. Stephens

ANDREW B. STEPHENS
Texas Bar No. 24079396
andrew@hackerstephens.com
HEATHER GEBELIN HACKER
Texas Bar No. 24103325
heather@hackerstephens.com
HACKER STEPHENS LLP
108 Wild Basin Rd. South, Suite 250
Austin, Texas 78746
(512) 399-3022 (phone)

REX A. SHARP
Texas Bar No. 18118800
rsharp@midwest-law.com
ISAAC L. DIEL*
idiel@midwest-law.com
HAMMONS P. HEPNER*

hhepner@midwest-law.com
SHARP LAW LLP
4280 West 75th St.
Prairie Village, Kansas 66208
(913) 901-0505

Attorneys for Plaintiff and the Certified Class

*admitted *pro hac vice*

CERTIFICATE OF SERVICE

I hereby certify that on November 4, 2025, this document was served through the Court's CM/ECF Document Filing System upon all counsel of record.

/s/ Andrew B. Stephens
Andrew B. Stephens

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

BRYAN P. SPENCE, individually and as a representative of a class of similarly situated persons, and on behalf of the AMERICAN AIRLINES, INC. 401(K) PLAN and the AMERICAN AIRLINES, INC. 401(K) PLAN FOR PILOTS,	§	
Plaintiffs,	§	Case No. 4:23-cv-00552-O
v.	§	
AMERICAN AIRLINES, INC., and the AMERICAN AIRLINES EMPLOYEE BENEFITS COMMITTEE,	§	
Defendants.	§	

APPENDIX TO PLAINTIFF'S MOTION FOR ATTORNEYS' FEES, COSTS, AND SERVICE AWARD

INDEX

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

BRYAN P. SPENCE, individually and as a representative of a class of similarly situated persons, and on behalf of the AMERICAN AIRLINES, INC. 401(K) PLAN and the AMERICAN AIRLINES, INC. 401(K) PLAN FOR PILOTS,	§	
Plaintiffs,	§	Case No. 4:23-cv-00552-O
v.	§	
AMERICAN AIRLINES, INC., and the AMERICAN AIRLINES EMPLOYEE BENEFITS COMMITTEE,	§	
Defendants.	§	

DECLARATION OF HEATHER GEBELIN HACKER IN SUPPORT OF PLAINTIFF'S MOTION FOR ATTORNEYS' FEES, COSTS, AND SERVICE AWARD

I, Heather Gebelin Hacker, of lawful age, upon personal knowledge, and pursuant to 28 U.S.C. § 1746, declare as follows:

1. I served as Class Counsel in the above-captioned matter and have done so throughout this litigation. I offer this declaration in support of Plaintiff's motion for attorneys' fees and service award under 29 U.S.C. § 1132(g)(1).

2. Plaintiff seeks payment of $6,589,800.50 in attorneys' fees for 5,859.1 hours of work reasonably expended by Class Counsel.

Qualifications and Expertise

3. I received my law degree from the University of Pennsylvania Law School in 2005 and have litigated in courts across the country for nearly 20 years. I am licensed to practice law in the States of Arizona, California, and Texas; the United States District Court for the District of Arizona, the Northern, Eastern, Central, and Southern Districts of California, the District of Colorado, the Northern District of Florida, the Central District of Illinois, the Northern, Southern, and Western Districts of Texas, and the Western District of Wisconsin; the U.S. Court of Appeals for the Second, Fifth, Seventh, Eighth, Ninth, and D.C. Circuits; and the United States Supreme Court.

4. Along with Andrew Stephens, I am a co-founding partner with Hacker Stephens LLP, an Austin, Texas law firm. HSLLP acted as lead counsel for the Class in this case. HSLLP is a two-lawyer firm that focuses its practice on civil litigation in state and federal trial and appellate courts, with a particular focus on complex civil cases involving constitutional and statutory claims. HSLLP represents plaintiffs and

defendants as lead trial and appellate counsel in numerous civil litigation matters in state and federal courts, including class action lawsuits. Some of HSLLP's cases are *Planned Parenthood of Greater Tex. Surgical Health Services v. City of Lubbock, Tex.*, 542 F. Supp. 3d 465 (N.D. Tex. 2021); *Whole Woman's Health v. Jackson*, 595 U.S. 30 (Dec. 10, 2021); *U.S. Navy SEALs 1-26 v. Biden*, 594 F. Supp. 3d 767 (N.D. Tex. Mar. 28, 2022), *appeal dismissed as moot*, 72 F.4th 666 (5th Cir. Jul. 6, 2023); *Fund Texas Choice v. Deski*, No. 1:22-cv-859-RP, 2025 WL 2020052 (W.D. Tex. May 23, 2025); and *United States ex rel. Doe v. Planned Parenthood Fed. of Am.*, 142 F.4th 292 (5th Cir. 2025).

5. Though HSLLP is a small firm, we have often prevailed against much larger firms, including O'Melveny & Myers LLP, Arnold & Porter LLP, Morrison & Foerster LLP, Wilmer Cutler Pickering Hale & Dorr LLP, and the U.S. Department of Justice.

6. Before founding HSLLP, I worked for the Texas Attorney General as an Assistant Solicitor General and litigated significant cases in federal trial and appellate courts on behalf of the State of Texas, such as *Davila v. Davis*, 582 U.S. 521 (2017); *Planned Parenthood of Greater Tex. Family Planning & Preventative Health Servs. v. Kauffman*, 981 F.3d 347 (5th Cir. 2020); and *Whole Woman's Health v. Paxton*, 10 F. 4th 430 (5th Cir. 2021). Before that, I was a trial and appellate litigator for a nonprofit religious liberty organization for a decade. Two of my notable cases were *OSU Student All. v. Ray*, 699 F.3d 1053 (9th Cir. 2012), *cert. denied,* 571 U.S. 819 (2013); and *Boardley v. U.S. Dep't of Interior*, 615 F.3d 508 (D.C. Cir. 2010).

Circumstances of this Case

7. Plaintiff Bryan Spence retained HSLLP and Sharp Law to bring this lawsuit on behalf of him and the rest of the participants in American Airlines' employee 401(k) plan. Mr. Spence could not afford to retain the firm hourly, so HSLLP and Sharp Law agreed to take the case on a contingent fee basis and advance any necessary expenses for the case.

8. As the Court knows, O'Melveny & Myers LLP, an AmLaw 100 global law firm, defended American Airlines in this case (along with Fort Worth counsel Kelly Hart & Hallman LLP). The New York City-based ERISA practice group at O'Melveny has been ranked as one of the country's best departments for ERISA litigation for 20 years by Chambers and Partners. *See* Chambers and Partners, *ERISA Litigation | USA*, "Departments," https://chambers.com/legal-rankings/erisa-litigation-usa-nationwide-5:635:12788:1?l=en-GB. Brian Boyle has been ranked as one of the country's top ERISA litigators for 13 years, and Shannon Barrett has similarly been ranked among the country's best for 12 years. *See id.*at "Lawyers."

9. O'Melveny does have a Dallas office, but defense counsel in this case were admitted pro hac vice and are based in New York City. ECF Nos. 27, 28, 31-32, 56, 58. Defense counsel also frequently defends American in ERISA litigation in this district. *See, e.g.,* ECF No. 23, *Galuppo v. Am. Airlines Inc.*, No. 4:25-cv-00599-P (N.D. Tex. Jul. 21, 2025) (order denying pro hac vice admission of defense counsel Robertson and Mahoney and noting they had already been granted pro hac vice admission seven and two times, respectively).

10. Because of the time necessary to pursue this case and litigate successfully against a Fortune 100 company represented by global law firm with extensive resources, HSLLP was forced to not pursue other cases and paid hourly work that it would have otherwise taken.

Compensable Time

11. HSLLP's normal billing practice is to prepare and maintain contemporaneous records of time spent on particular matters. Consistent with that practice, HSLLP kept contemporaneous records of time spent working on this case. If the Court finds counsel's declarations insufficient to substantiate Class Counsel's time spent on the case, Class Counsel will provide them to the Court.

12. A review of my billing records shows that I have spent a total of 722.2 hours on this case to date.

13. Based on my experience, the hours I spent on this case are more than appropriate for a case of this complexity.

14. As the firm agreed to take the case on behalf of Bryan Spence on contingency along with co-counsel Sharp Law, there was no guarantee of recovery of any time or expenses, and HSLLP therefore had no incentive to spend more time than necessary to litigate the case successfully. This is especially so as a two-lawyer firm, since HSLLP has a finite amount of time, and any time spent on this case took away from available time we had to bill hourly clients and bring in revenue for the firm.

15. The expense and time necessary to successfully litigate this case represents a significant investment for our small firm, and along with the success we

achieved, justifies awarding reasonable attorneys' fees as compensation, as allowed under ERISA.

16. While HSLLP prepared to file the instant motion, American Airlines filed a motion for reconsideration and to alter or amend the final judgment and a request for hearing. I estimate that HSLLP will spend approximately 80 additional hours researching and drafting a response, conferring with opposing and co-counsel, and preparing for and attending the hearing requested by American Airlines' counsel. HSLLP can submit supplemental declarations after the motion for reconsideration is resolved with updated numbers including the exact amount of time expended responding to the motion.

Results Achieved

17. Class Counsel obtained final and permanent success on the merits for the Class in this litigation and thus merit attorneys' fees from Defendant under ERISA § 502(g)(1) (29 U.S.C. § 1132(g)(1)).

18. The injunctive relief the Court awarded will protect the retirement investments of the Class going forward from any similar breach of the duty of loyalty by American Airlines. Among other things, American Airlines will now be required to implement policies preventing a conflict of interest between the company or the individuals administering the 401(k) Plan and the Plan's investment managers. American will also not be permitted to allow investment managers to invest the Plan's money or vote the Plan's proxies to further anything but the financial best interests of the Plan Participants.

19. Commentators have called this case a "landmark case" that "may significantly change the landscape for ERISA fiduciaries." *See* Brian Anderson, *Key Takeaways to Consider in Wake of American Airlines ESG Opinion*, 401k Specialist (Jan. 30, 2025), https://401kspecialistmag.com/key-takeaways-to-consider-in-wake-of-american-airlines-esg-opinion/; *see also, e.g.,* Leo Almazora, *Texas court rules against American Airlines in ESG 401(k) plan case*, Investment News (Jan. 10, 2025); https://www.investmentnews.com/retirement-planning/texas-court-rules-against-american-airlines-in-esg-401k-plan-case/258873. Legal commentators have also noted that the Court's findings of fact and conclusions of law "marks the first time that a federal judge has written an on-the-merits decision on the controversial topic of ESG and the duties of retirement plan fiduciaries under ERISA," and "has important ramifications for all sponsors of 401(k) plans. Joshua A. Lichtenstein, et al., *Practical Takeaways from Spence v. American Airlines, Inc., for ERISA Plan Fiduciaries*, Ropes & Gray LLP Alerts (Jan. 15, 2025), https://www.ropesgray.com/en/insights/alerts/2025/01/practical-takeaways-from-spence-v-american-airlines-inc-for-erisa-plan-fiduciaries; *see also* Eileen J. O'Connor, *Has an American Airlines Pilot Saved Retirement Savings from Wokeism?*, American Greatness (Jan. 24, 2025), https://amgreatness.com/2025/01/24/has-an-american-airlines-pilot-saved-retirement-savings-from-wokeism/. Copies of these articles are attached as Exhibit A.

20. It is also highly unusual that this case went to trial. To my knowledge, this is the first ERISA class action by 401(k) plan participants for breach of fiduciary

duty that has ever gone to trial in the Northern District of Texas. Many ERISA cases I reviewed that were filed in this district in the last decade settled after a motion to dismiss was decided.

21. Because of the unique nature of the claims in this case, Plaintiff's damages theory was also unique. *See* Tr. vol. IV at 171:15-16, 215:8-216:1. And as the Tenth Circuit has noted, "determining the damages arising from a breach of fiduciary duty can often be difficult. For instance, there is no easy way to determine the extent of a loss from a breach that may have been diffuse and spread out across time or the extent of a loss resulting from lost investment opportunities." *Ramos v. Banner Health*, 1 F.4th 769, 778 (10th Cir. 2021). The Court ultimately held that Plaintiff did not meet his burden to prove the requested damages of less than $16,000,000.00, but that ruling does not detract from the overall success of this precedent-setting case and the value of the injunctive relief awarded to the class.

Rates

22. The reasonable hourly rate proposed by HSLLP for our work is $1,250 per hour.

23. HSLLP's background, expertise, and skill, evidenced by their victory in this case over some of the best ERISA litigators in the country, show that both Mr. Stephens and I would be able to charge similar or higher rates as attorneys litigating at large international law firms. *See* Appx. 079 (Declaration of Randall W. Miller) at ¶¶ 12-13.

24. The rates requested by Class Counsel are also reasonable based on the rates awarded to other attorneys of similar skill and experience in the Dallas-Fort Worth area. *See* Appx. 079 (Miller Decl.) at ¶ 13.

25. Class Counsel's rates are also reasonable when compared to rates awarded by this Court to nonprofit counsel Becket Fund in *Franciscan Alliance, Inc., v. Becerra*, 681 F. Supp. 3d 631, 643-45 (N.D. Tex. 2023), including a 2022 rate of $1,000 per hour for counsel with similar experience and background to me.

26. Similarly, Mr. Miller, a Dallas lawyer with Munsch Hardt Kopf & Harr, P.C., attests that Class Counsel's proposed rates are lower than the rates at his prior firm (Kirkland & Ellis LLP) three years ago, and other firms he is familiar with would charge their clients more for attorneys of comparable seniority and expertise on a similar matter. Appx. 079 (Miller Decl.) at ¶¶ 13-14.

Lodestar Amount

27. Based on the hours reasonably expended in this litigation by HSLLP, minus deductions for billing judgment, and our reasonable proposed hourly rate ($1250), the lodestar amount for HSLLP's work is $3,067,750.00.

28. In light of my skill and experience, market rates, the "landmark" nature of this litigation, the success of the case for the class, and the fact that it was litigated by small firms against the most formidable opponents, the proposed attorneys' fees are reasonable.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: November 4, 2025.

/s/ Heather Gebelin Hacker
Heather Gebelin Hacker

EXHIBIT A

401(K) FIDUCIARY YOUR 401(K) NEWS

Key Takeaways to Consider in Wake of American Airlines ESG Opinion

Judge's recent decision in landmark case gives plenty for plan fiduciaries, sponsors and advisors to think about moving forward

by **Brian Anderson** · January 30, 2025 · 6 minute read

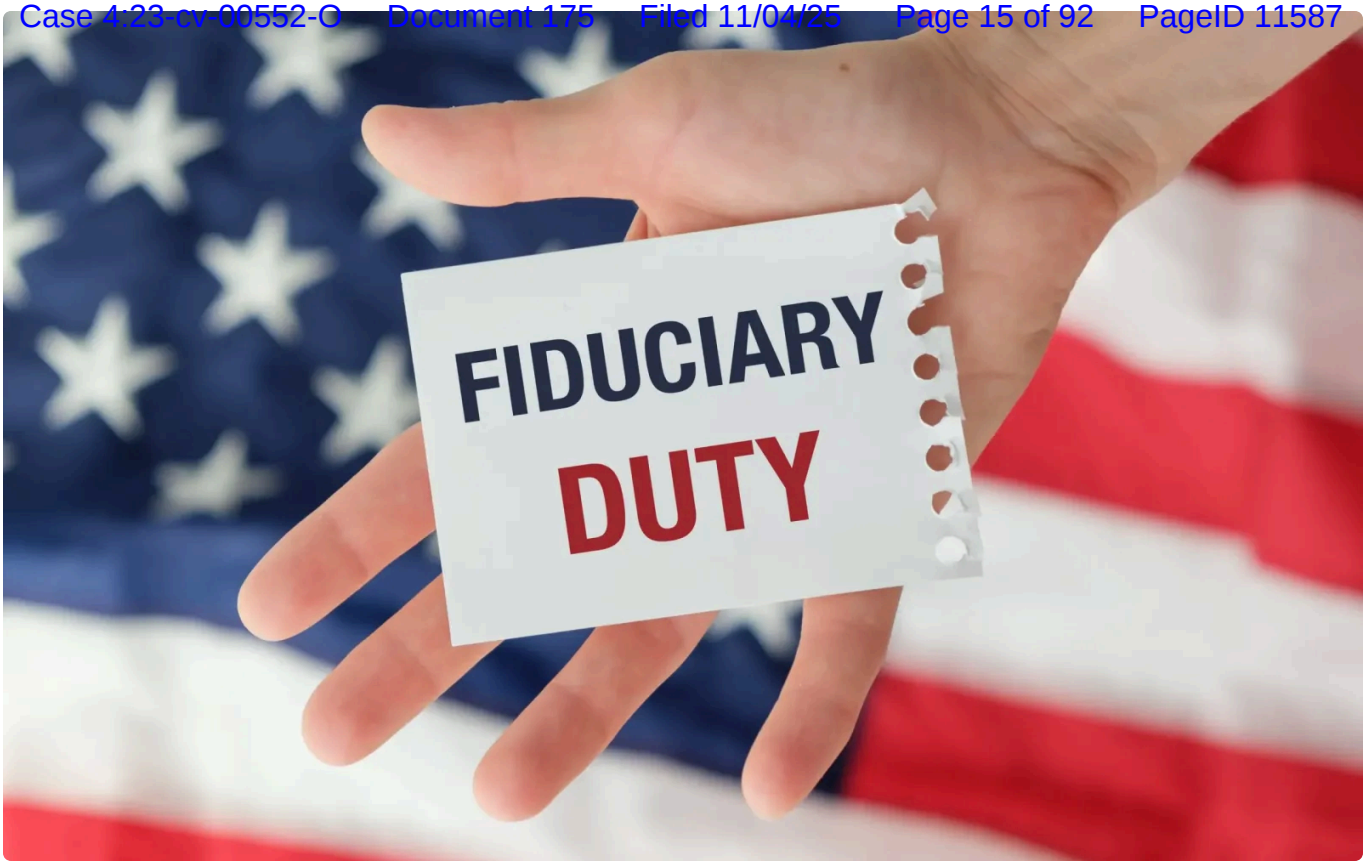


Image credit: © Inna Kot | Dreamstime.com

Free your 401(k). Held-away doesn't have to mean left behind. Pontera

In the wake of the landmark opinion issued by the U.S. District Court for the Northern District of Texas Jan. 10 in *Spence v. American Airlines, Inc.*, plan sponsors, fiduciaries and advisors are scrambling to make sense of the various implications of the opinion under ERISA.

The court found that American Airlines did not breach its fiduciary duty of prudence, but breached its fiduciary duty of loyalty by allowing environmental, social, and governance (ESG) considerations to influence the management of its 401(k) plans, even though the selected funds were not explicitly ESG-focused.

The opinion has created considerable confusion, prompting several state officials to demand the federal government clearly regulate ESG

investments. Fox Business reported Jan. 29 that state treasurers and auditors from Alaska to South Carolina have written to the acting heads of the Securities and Exchange Commission (SEC) and Department of Labor (DOL) as a result of the Texas court ruling requesting the regulators take decisive action to "uphold fiduciary duty laws and protect retirement plans from activist corrosion."

As written, the opinion illustrates that it is possible for a plan fiduciary to satisfy its duty of prudence (by meeting prevailing industry standards) but, nevertheless, breach its duty of loyalty by ignoring conflicts of interests between what's good for the company versus what's best for plan participants.

The case is a first of its kind in the ongoing debate over ESG initiatives in retirement plan investments. Since the opinion was issued, experts are chiming in to offer some key considerations plan sponsors and fiduciaries need to take note of regarding a variety of issues raised by the case that may significantly change the landscape for ERISA fiduciaries.

4 points from Daniel Aronowitz

On his FidGuru blog, Daniel Aronowitz of Encore Fiduciary posted a piece on Jan. 30 titled, "*American Airlines is Collateral Damage in Judicial Backlash Against ESG Investing—Four Thoughts and Recommendations for Plan Sponsors to Consider*."


Encore Fiduciary's Daniel Aronowitz

In it, Aronowitz analyzed four key thoughts plan fiduciaries and advisors need to consider in the wake of this "unprecedented 'prudent but disloyal' trial verdict." Here are his brief summaries of those four thoughts, which it should be noted are each examined in much more detail in his blog post.

1. The Decision Was Wrong and Unfair: American Airlines offered no ESG investments in its retirement plans, had a track record of declining to add ESG investments to company-sponsored plans, and no American Airlines 401(k) plan participant was harmed from any plan investment. If there was any temporary damage to Exxon stock (a tiny component of any S&P index fund) based on BlackRock's proxy voting, the damage was to every index investor in America. American Airlines is collateral damage in judicial ESG backlash intended for the real culprit, if there is any, which is BlackRock and other investment managers who have pursued public ESG campaigns. This is a case of unfair vicarious liability.

2. There is No ESG Problem in 401(k) Plans: Any concern that this will have a chilling effect on plan fiduciaries in considering ESG investments is overblown and misplaced because most 401(k) plans do not offer ESG investments in the core lineup, or at best offer a single ESG or social choice index fund alternative. The problem is not plan sponsors, who largely avoid ESG. The problem is from investment managers who have spent years trying to curry favor with climate and other "woke" activists.

3. Hold Investment Managers Accountable: If it is now illegal to associate with "woke" investment managers, the key takeaway is that plan sponsors must hold investment managers accountable when they pursue non-pecuniary interests in their investments—even when the plan sponsor does not choose the ESG investment options from the managers investment menu. American Airlines was scapegoated in the fallout from BlackRock's ESG campaign. If courts are going to find vicarious liability for the mere association with an investment manager who pursues ESG strategies in proxy voting, then the investment managers need to indemnify their clients. Simply put, BlackRock caused the problem, and BlackRock must fix it.

4. Rethink Who Serves on the Fiduciary Plan Committee: Plan sponsors should rethink including finance professionals on the fiduciary plan committee. Finance professionals add value and expertise in managing investments, but this

could raise the appearance of potential conflicts if they have corporate business with investment managers.

Read Aronowitz's complete blog post here.

5 takeaways for plan fiduciaries


Steven Day

Texas-based national law firm Jackson Walker recently posted a brief titled, "*Texas District Court's Decision in 401(k) Case Has Wide-Ranging Implications for Plan Fiduciaries*," which outlines five key takeaways from the opinion, written by Partner Steven W. Day and Associate Brian Wilson.

Assuming the court's holdings survive any appeals, Day and Wilson write that the American Airlines case provides plan fiduciaries with several key takeaways:


Brian Wilson

• Although no ESG funds were provided in the plans and there was no claim that offering ESG funds in a 401(k) plan is, itself, a fiduciary breach, the opinion specifically states that "ERISA does not permit a fiduciary to pursue a non-pecuniary interest no matter how noble it might view the aim," which would likely prohibit plan fiduciaries from selecting ESG funds as core investment options.

• Despite the fact that American Airlines designated the Employee Benefits Committee to serve as the plan's fiduciary, the court still held that American Airlines, itself, was a plan fiduciary due to its ability to appoint the Committee

members and management's role in selecting investment managers as well as other plan responsibilities.

• Although the court's opinion (and trial witnesses) acknowledges that it is not customary for plan fiduciaries to monitor the voting activities of the plan's investment managers, plan fiduciaries may now feel obligated to monitor such voting activities, review the manager's voting policies, and/or have the plan retain voting rights in order to avoid similar conflicts of interest.

• Although American Airlines engaged an independent fiduciary, Aon Investments, USA, to assist with the selection and monitoring of investment managers, the court did not believe that it was enough to insulate American Airlines from its obligation to ensure that the managers were acting for the exclusive benefit of the plan participants and solely in their economic interests.

• Given that many large investment managers and index fund providers are also major shareholders of many publicly traded companies, plan sponsors may find themselves in a situation similar to American Airlines and BlackRock, in which an investment manager for the plan is also a major shareholder of the plan sponsor. Plan fiduciaries at publicly traded companies should consider reviewing any potential conflicts of interest with their plans' investment managers and establish policies and procedures to ensure any conflict of interest does not result in fiduciary decisions that are in the company's interest but not in the plan participants' best interest.

Day and Jackson's brief also provides a summary of the case and the judge's ruling.

Case background

The case gained instant notoriety upon being filed in June 2023. Senior American Airlines pilot Bryan P. Spence sued American Airlines, arguing that the company's 401(k) plan—one of the largest in the country—picks investments that pursue "leftist political agendas through environmental, social and governance ['ESG'] strategies, proxy voting, and shareholder activism—activities which fail to satisfy these fiduciaries' statutory duties to maximize financial benefits in the sole interest of the Plan participants."

The suit argued that over the past 6 years (dating from 2023), the plan underperformed due to the airline choosing to invest in and recommend funds that meet ESG goals—including sustainability efforts, LGBTQ+ interests, and racial and gender diversity—causing him financial harm. Spence claimed the company's approach is "flatly inconsistent" with its fiduciary responsibility under ERISA.

Well after a four-day non-jury trial that was held in June 2024, Judge Reed O'Connor of the U.S. District Court for the Northern District of Texas on Jan. 10 ruled that American Airlines breached its fiduciary duty of loyalty under ERISA to make investment decisions based solely on the financial interests of 401(k) plan beneficiaries—but not its fiduciary duty of prudence—in allowing its retirement plan to be influenced by corporate goals unrelated to workers' best financial interests.

The Court also deferred ruling on the remedies, including the questions of whether injunctive relief is warranted and what damages, if any, are appropriate. Both parties were instructed to submit a cross-supplemental briefing by no later than Friday (Jan. 31, 2025), addressing a handful of considerations.

The industry will be closely watching to see what damages—if any—are awarded in the case. While miminal or no damages could mean American won't appeal the ruling, significant damages could lead to an appeal and an onslaught of copycat lawsuits.

SEE ALSO:

- Southwest 401(k) Hit with Lawsuit for Underperforming Fund
- Judge Finds American Airlines Liable for ESG Investing in 401(k) Plan
- American Airlines Pilot Sues Company 401(k) Over 'Woke' ESG Investing

Brian Anderson

Editor-in-Chief at 401(k) Specialist | banderson@401kspecialist.com | + posts

Veteran financial services industry journalist Brian Anderson joined 401(k) Specialist as Managing Editor in January 2019. He has led editorial content for a variety of well-known properties including Insurance Forums, Life Insurance Selling, National Underwriter Life & Health, and Senior Market Advisor. He has always maintained a focus on providing readers with timely, useful information intended to help them build their business.

401(K) FIDUCIARY | 401(K) LITIGATION | AMERICAN AIRLINES | ENCORE FIDUCIARY | JACKSON WALKER

SHARE SHARE TWEET SHARE

PREVIOUS ARTICLE

Saver's Match Could Solve the Retirement Savings Gap: Morningstar

NEXT ARTICLE

InvestmentNews
The trusted resource for independent-minded advisors

RETIREMENT PLANNING

Texas court rules against American Airlines in ESG 401(k) plan case

The presiding judge found the airline breached its fiduciary duty under federal law by prioritizing non-financial considerations in its employee retirement plan.

JAN 10, 2025

By Leo Almazora

A federal judge in Texas has ruled that American Airlines violated federal law by incorporating environmental, social, and governance principles into its employee retirement plan investment decisions.

The Friday decision reported by multiple news outlets appeared to be the first of its kind, adding to the list of significant challenges to companies using socially conscious investing strategies in their corporate benefit plans.

The ruling also comes amid a broader backdrop of mounting conservative backlash against socially conscious investing, including many voices pushing back against the approach.

The lawsuit *was originally brought forward in 2023 by Bryan Spence*, one of its pilots, on behalf of more than 100,000 participants in the company's 401(k) plan. Spence alleged that the inclusion of *ESG*-focused funds led to underperformance compared to non-*ESG* options, thereby harming employees' retirement savings.

As detailed in coverage by Reuters, US District Judge Reed O'Connor found that the airline breached its fiduciary duty under the Employee Retirement Income Security Act by prioritizing ESG considerations over the financial interests of participants in its 401(k) plan. The court criticized American Airlines for allowing its asset manager, BlackRock, to advance goals unrelated to maximizing returns for plan participants.

"ERISA does not permit a fiduciary to pursue a non-pecuniary interest no matter how noble it might view the aim," O'Connor said, according to *separate reporting by Bloomberg Law*. He went on to maintain that ESG investments "often underperform traditional investments by approximately 10%."

BlackRock itself has been subject to another anti-ESG legal action. In late November, a contingent of 11 states including Texas *filed a federal lawsuit again BlackRock, Vanguard and State Street*, alleging that they illegally curtailed competition in the energy space by influencing companies to support climate advocacy objectives.

While American Airlines has not commented publicly on the ruling, BlackRock, which was not a defendant in the case, has previously defended its ESG strategy as being aligned with clients' long-term goals. However, that's not exactly how O'Connor sees it.

"The evidence made clear that [American's] incestuous relationship with BlackRock and its own corporate goals disloyally influenced administration of the Plan," O'Connor said, according to Reuters.

Latest News

NFP names new national leaders for retirement and wealth practices

The top-level changes come in the wake of the Aon-owned firm's divestment of Wealthspire and other affiliated wealth businesses to PE firm Madison Dearborn Partners.

Waverly goes West with Pacific Portfolio acquisition

Counting another deal in Massachusetts, the $26 billion RIA has just added more than $5 billion in assets, matching its full-2024 total.

November celebrates 'Long-Term Care Awareness Month' by focusing on 'sandwich generation'

Advisors highlight 'Long-Term Care Awareness Month' by offering financial tips to adults simultaneously taking care of their parents and children.

January 15, 2025

Practical Takeaways from *Spence v. American Airlines, Inc.* for ERISA Plan Fiduciaries

Authors: Joshua A. Lichtenstein, Michael R. Littenberg, Brian D. McCabe, George B. Raine, Amy D. Roy, Robert A. Skinner, Jonathan M. Reinstein

On January 10, 2025, Judge Reed O'Connor of the Northern District of Texas issued a much-anticipated ruling in *Spence v. American Airlines, Inc.*, which marks the first time that a federal judge has written an on-the-merits decision on the controversial topic of ESG and the duties of retirement plan fiduciaries under ERISA. In his opinion, Judge O'Connor found that American Airlines and the American Airlines Employee Benefits Committee ("EBC")[1] breached their ERISA duty of loyalty by including funds on the American Airlines 401(k) Plan[2] lineup that were not ESG-focused funds but were managed by a non-party investment manager ("Investment Manager") that the judge determined to have engaged with issuer companies on ESG-related issues and on occasion voted proxies in support of ESG-related proposals. At the same time however, the judge did not find a breach of the duty of prudence under ERISA, because the defendants' monitoring practices with respect to the Investment Manager were in line with the prevailing standards among other large plan fiduciaries.

While the news headlines suggest that the case is about ESG investing, none of the funds on the Plan menu were actually ESG funds. The ruling is solely focused on the Investment Manager's proxy voting practices and alleged pro-ESG shareholder engagement. From that perspective, the case can be viewed as another battle in the broader crusade to derail ESG investing practices in the United States.

From a plan fiduciary standpoint, Judge O'Connor's ruling is concerning because it deals with the nearly universal practice of delegating proxy voting authority to an ERISA plan's external managers. For that reason, the ruling has important ramifications for all sponsors of 401(k) plans, and it should not be dismissed as only applicable to plans with investments that bear ESG attributes. This decision, especially if its reasoning is upheld on appeal and adopted by other courts, could cause ERISA plan fiduciaries to consider changes to their longstanding practice of delegating proxy voting to their investment managers which could potentially include: (i) implementing certification/attestation protocols with respect to voting, (ii) conducting more robust due diligence of managers' voting records prior to selection or (iii) assessing the possible use of pass-through voting, where votes are passed on to the participants and beneficiaries directly.

Background

In June 2023, the plaintiff, who is a pilot and participant in the Plan, filed a putative class action

This alert should not be construed as legal advice or a legal opinion on any specific facts or circumstances. This alert is not intended to create, and receipt of it does not constitute, a lawyer-client relationship. The contents are intended for general informational purposes only, and you are urged to consult your attorney concerning any particular situation and any specific legal question you may have. © 2025 Ropes & Gray LLP

ATTORNEY ADVERTISING

lawsuit against American Airlines and the EBC asserting that the defendants mismanaged the Plan and violated their ERISA duties of prudence and loyalty as a result of using investment managers who pursued supposedly "non-financial and nonpecuniary ESG policy goals via proxy voting and shareholder activism." At issue were passively managed index funds that invested exclusively in a collective investment trust overseen by the Investment Manager[3] (although the plaintiff's theory of liability could potentially apply to registered funds on a plan lineup). The plaintiff claimed that the Investment Manager harmed the financial interests of plan participants and their beneficiaries because it pursued a "pervasive ESG agenda" and this "engagement strategy…covertly convert[ed] the Plan's core index portfolios to ESG funds." According to the plaintiff, the defendants gave Plan assets to the Investment Manager who purposefully pursued ESG activism (in the form of public statements by the Investment Manager's CEO regarding the risk of climate change as well as the Investment Manager's vote in favor of an allegedly pro-ESG proposal at ExxonMobil in 2021), which allegedly caused the Plan's holdings to underperform and lose value.

The plaintiff alleged two causes of action under ERISA: (i) breach of defendants' fiduciary duty of prudence by choosing to invest Plan assets with an investment manager that embraced ESG objectives and failing to monitor or stop the Investment Manager from pursuing objectives that were harmful to the Plan participants' investments; and (ii) breach of the duty of loyalty by continuing to use the Investment Manager and endorsing the Investment Manager's alleged pro-ESG agenda to serve the defendants' own corporate agenda and failing to act with "an eye single to the interests of the participants and beneficiaries."

The Court's Ruling

No Breach of the Duty of Prudence

Judge O'Connor concluded that the plaintiff failed to prove a breach of the ERISA duty of prudence in connection with the design and implementation of its processes for monitoring the Plan—in particular, with respect to selecting and retaining investment managers, overseeing proxy voting and not intervening in the ExxonMobil proxy vote. Noting how the prudence standard is objective and "inherently comparative" and that courts must evaluate the conduct in question against contemporary industry practices, the judge explained how the defendants' procedures comport with prevailing fiduciary standards, and "at times even surpassed those typically employed by large-plan fiduciaries across various benchmarks." When it came to evaluating investments and gauging the performance of the Plan's managers, the opinion mentioned:

1. **Regular EBC Meetings to Review Plan Investment Performance** – The EBC met at least quarterly to review the performance of the Plan's investment options, and at these quarterly meetings, the EBC reviewed and considered detailed reporting regarding market

This alert should not be construed as legal advice or a legal opinion on any specific facts or circumstances. This alert is not intended to create, and receipt of it does not constitute, a lawyer-client relationship. The contents are intended for general informational purposes only, and you are urged to consult your attorney concerning any particular situation and any specific legal question you may have. © 2025 Ropes & Gray LLP

ATTORNEY ADVERTISING

developments, as well as qualitative and quantitative information regarding the aggregate performance of the Plan's investment funds and the underlying investment managers. The EBC also prepared minutes summarizing the discussions and decisions that occurred in these quarterly meetings.

2. **Use of Internal and External Experts** – The EBC engaged both internal and external experts to review, monitor and evaluate the Plan's investment options and investment managers across numerous dimensions. Internally, the EBC relied on the company's Asset Management Group to provide advice regarding the Plan, by consulting and supporting the EBC's fiduciary function, including, with respect to the selection and monitoring of the Plan's investment options. In particular, the Asset Management Group regularly reviewed detailed qualitative and quantitative information regarding the Plan's investment options —specifically, performance data for investment options and their underlying managers relative to benchmarks and peer groups. The EBC also relied on an established outside consultant that was hired to provide additional investment advice and monitoring. The Asset Management Group would also regularly consult with the investment advisor to the pilots' union, in order to collect additional feedback on the Plan.

In terms of proxy voting, the opinion noted how the Plan's investment management agreements ("IMAs") had delegated such activities to its managers unless specifically reserved to the EBC in a specific IMA, and that the managers were to comply with their proxy voting guidelines as disclosed to the EBC. Note, delegation like this normally applies to ERISA plan asset funds or separately managed accounts. The Plan's managers were also responsible for providing revised voting guidelines to the Asset Management Group when updated, as well as supplying the EBC with materials regarding their proxy voting practices, including, an annual summary report of how proxies were voted in a given fund. In accordance with its IMA with the Plan, the Investment Manager was to provide quarterly attestations to the EBC confirming compliance with its proxy-voting guidelines; however, at trial, it came to light that the defendants had not received these quarterly attestations and were not able to ensure compliance with the Investment Manager's voting guidelines. Notwithstanding the defendants' alleged deficiencies in their oversight of the Investment Manager's proxy voting activities, Judge O'Connor acknowledged that fiduciary committees for defined contribution plans "rarely, if ever, devote committee time or focus on independently reviewing an investment manager's overall proxy voting practices." Moreover, the ruling explained how historically, proxy voting issues have infrequently been judged by advisors as material to the evaluation of performance or expected performance.

In summary, because the defendants demonstrated a robust process for assessing and scrutinizing investment performance and that any perceived shortcomings with respect to monitoring the

This alert should not be construed as legal advice or a legal opinion on any specific facts or circumstances. This alert is not intended to create, and receipt of it does not constitute, a lawyer-client relationship. The contents are intended for general informational purposes only, and you are urged to consult your attorney concerning any particular situation and any specific legal question you may have. © 2025 Ropes & Gray LLP

ATTORNEY ADVERTISING

Investment Manager's-proxy voting activities were consistent with the industry practices of fiduciaries to large plans, the court found that the defendants had not breached their duty of prudence under ERISA. This is the outcome to be expected, as courts are generally deferential to the decisions made by fiduciaries when those fiduciaries follow appropriate processes like those used by the EBC.

Breach of the Duty of Loyalty

In a surprising turn, Judge O'Connor concluded that the plaintiff had proved the defendants had violated their duty of loyalty under ERISA because American Airlines's "incestuous relationship" with the Investment Manager and their own corporate goals disloyally influenced the defendants in their administration of the Plan. As the ruling explains, the duty of loyalty requires ERISA fiduciaries not to be influenced by the interest of any third person or by motives other than the accomplishment of the purposes of the ERISA plan. To establish a breach of this duty, a plaintiff must show that the fiduciary's actions or decisions were primarily motivated by interests beyond those of participants and beneficiaries. According to the court, the Investment Manager had an outsized influence on the defendants, which impacted their decision-making for the Plan as evidenced by the fact that:

1. the Investment Manager was the Plan's largest manager,
2. the Investment Manager was one of American Airlines's largest shareholders (owning 5% of American Airlines's stock), and
3. the Investment Manager financed approximately $400 million of American Airlines's corporate debt when the company was experiencing financing challenges.

The court also noted how American Airlines could have been potentially susceptible to a proxy fight (along the lines of what happened at ExxonMobil) unless it complied with the Investment Manager's climate-related demands and reduced its fossil fuel consumption. Finally, the court cited testimony by the American Airlines's Treasurer (and a member of the EBC) at trial that a "failure to signal that [the company] was actively complying with ESG disclosure requirements would potentially undermine its ability to obtain billions of dollars in essential loans from the [Investment Manager]." According to the court, there was a perceived value "in appeasing [the Investment Manager]" and that this "cross-pollination of interests and influence" caused the defendants to "not sufficiently monitor, evaluate and address the potential impact of the Investment Manager's ESG-oriented proxy voting and shareholder engagement." For example, the defendants never requested that its outside consultant analyze the Investment Manager's proxy voting practices until after the plaintiff's lawsuit was filed in 2023, and the members of the EBC

This alert should not be construed as legal advice or a legal opinion on any specific facts or circumstances. This alert is not intended to create, and receipt of it does not constitute, a lawyer-client relationship. The contents are intended for general informational purposes only, and you are urged to consult your attorney concerning any particular situation and any specific legal question you may have. © 2025 Ropes & Gray LLP

ATTORNEY ADVERTISING

(as well as the Asset Management Group) never raised concerns about the Investment Manager's track record of ESG engagement during quarterly meetings.

The ruling also suggests that the lack of monitoring and oversight reflected a "shared belief" between the defendants in their corporate capacity and the Investment Manager that "ESG is a noble pursuit" and that this alignment demonstrates how the defendants did not act with an "eye single" toward maximizing the financial benefits of participants and beneficiaries. While the court focused on the alleged influence by and relationship between the Investment Manager and the defendants as the hook for the duty of loyalty breach, the ruling contained minimal discussion of any evidence that the Investment Manager's proxy voting and engagement activities were nonpecuniary in nature. For instance, the ruling did not address the defendants' argument that in the case of the ExxonMobil proxy vote, the Investment Manager "was motivated by its view of investors' long-term financial interests" and the "specific concern that, unlike its peers, Exxon had failed to diversify its operations to 'protect against a possible decline in demand for fossil fuels." In their briefs, the defendants also explained how the Investment Manager's vote was in line with the recommendations of the major proxy voting advisory services firms and other managers —including, Vanguard, whom the plaintiff lauded as not succumbing to the "ESG agenda pursued by other investment managers[.]" However, none of this evidence was addressed in Judge O'Connor's opinion. Finally, the court gave minimal credence to the defendants' argument that the retention of the Investment Manager resulted in lower fees and at least comparable returns to alternative managers during the class period.

Damages

The court deferred ruling on the question of losses pending further briefing from the parties, as well as what the remedies should be, including, whether injunctive relief is warranted and what damages, if any, are appropriate. According to the plaintiff, the Investment Manager's May 2021 proxy vote at ExxonMobil harmed the Plan by devaluing its energy holdings, which, according to an expert who testified on behalf of the class, led the Plan to suffer short-term losses of over $15 million (the defendants have argued that the methodology for deriving that figure was "deeply flawed"). Therefore, further briefing will be necessary before the court can determine what the right amount of damages (if any) should be.

Key Takeaways

1. **ESG was Scrutinized even with no ESG Funds** – As described above, this lawsuit did not deal with any ESG-focused, impact or similar funds. The broader net of ESG activity at issue here was based solely on the proxy activities of standard funds. In response to this decision, plan sponsors may wish to conduct greater diligence and monitoring of investment managers'

This alert should not be construed as legal advice or a legal opinion on any specific facts or circumstances. This alert is not intended to create, and receipt of it does not constitute, a lawyer-client relationship. The contents are intended for general informational purposes only, and you are urged to consult your attorney concerning any particular situation and any specific legal question you may have. © 2025 Ropes & Gray LLP

ATTORNEY ADVERTISING

use of ESG and other collateral considerations in conducting business that impacts retirement plans. Plan sponsors and fiduciaries should also remain cognizant of the risk that virtually any service provider or investment manager retained by a plan could potentially form the basis for a similar lawsuit (although not all such suits may be successful).

2. **Scrutiny of Delegated Proxy Voting?** – The lawsuit focused on the Investment Manager's public statements, proxy voting activities and other instances of shareholder engagement to promote ESG objectives. This ruling (especially if its reasoning is upheld on appeal and adopted by other courts) may suggest that for ERISA plan fiduciaries that delegate proxy voting authority to their managers under the terms of their IMAs, there will be additional focus going forward on their monitoring and scrutiny of the voting activities of their managers. This could entail more robust due diligence of managers' voting records as well as greater reliance on reporting and regular certifications/attestations that managers are complying with applicable proxy voting guidelines. Delegation of proxy voting authority is a widespread practice in the retirement industry, and it remains to be seen whether this decision will lead to enhanced monitoring of proxy voting and/or increased pressure to use pass-through voting in order to mitigate potential litigation risks for plan sponsors and plan fiduciaries going forward.

3. **Prudence is Process: Lessons for Surviving a Claim Alleging Breach of the Duty of Prudence** – As the ruling notes, the defendants were focused on investment performance, and they had a robust process and protocols in place for doing so, which were in line with (if not exceeded) the prevailing practices of large plan fiduciaries at the time. The EBC convened regularly, they maintained detailed records and documentation of their meetings, utilized a well-regarded consultant (who was selected following a formal request for proposal process, in which the merits of Aon's advisory services were vetted and compared to those of other investment advisory firms), and relied on various internal experts to advise them on how to evaluate the Plan's investment options and managers. While these practices may be routine for large plan sponsors, they still provide a useful example of what measures plan fiduciaries can take to demonstrate adherence to their duties under ERISA.

4. **The 2022 ESG Rule Remains in Effect (for Now)** – Even though the decision clearly demonstrates Judge O'Connor's hostility toward allegedly pro-ESG initiatives and his skepticism regarding the role of ESG in investment decision-making, it does not invalidate the 2022 ESG Rule that the Biden administration adopted. That said, the rule remains subject to ongoing litigation in the same district by the attorneys general of 26 states seeking to invalidate it. Moreover, with the upcoming change in administration, the Trump-led DOL may choose to stop defending the 2022 ESG Rule, and it may also be sympathetic to the

This alert should not be construed as legal advice or a legal opinion on any specific facts or circumstances. This alert is not intended to create, and receipt of it does not constitute, a lawyer-client relationship. The contents are intended for general informational purposes only, and you are urged to consult your attorney concerning any particular situation and any specific legal question you may have. © 2025 Ropes & Gray LLP

ATTORNEY ADVERTISING

theories offered in this case as to why ESG investing and ESG shareholder engagement do not square with ERISA fiduciary duties.

About our Practice

Ropes & Gray has a leading ESG, CSR and business and human rights compliance practice. We offer clients a comprehensive approach in these subject areas through a global team with members in the United States, Europe and Asia. Senior members of the practice have advised on these matters for more than 30 years, enabling us to provide a long-term perspective and depth and breadth of experience that few firms can match. For further information on the practice, click here.

---

1. During the class period, the EBC comprised American Airlines officers, including senior executives from different business units: (1) Treasurer, (2) Chief Financial Officer and (3) Chief People Officer.
2. The American Airlines, Inc. 401(k) Plan and the American Airlines, Inc. 401(k) Plan for Pilots are the two participating plans of the Master Trust for DC Plans of American Airlines, Inc. and Affiliates (collectively, "the Plan").
3. The Plan offered four tiers of investment options to participants: (1) target date funds, (2) passively managed index funds, (3) actively managed funds and (4) a self-directed brokerage window.

This alert should not be construed as legal advice or a legal opinion on any specific facts or circumstances. This alert is not intended to create, and receipt of it does not constitute, a lawyer-client relationship. The contents are intended for general informational purposes only, and you are urged to consult your attorney concerning any particular situation and any specific legal question you may have. © 2025 Ropes & Gray LLP

ATTORNEY ADVERTISING

Search

FEATURED ARTICLE

Has an American Airlines Pilot Saved Retirement Savings From Wokeism?

A court ruled American Airlines' retirement plans violated ERISA by prioritizing ESG goals over returns, highlighting the conflict between ideological investing and fiduciary duty.

By Eileen J. O'Connor *January 24, 2025*

ADVERTISEMENT

y Maguire - Keller Will
$250,000

hond Frasier - Legacy
$247,000

Regian - EG Realty K
$185,000

y Scott - TX Prime RE/
$750

Report Ad

· Legacy Broker Group Keller Williams Realty

Search Homes You'll Love
Homes.com

Report Ad

Report Ad

Report Ad

On June 2, 2023, American Airlines pilot Bryan P. Spence, on behalf of himself and similarly situated persons, brought suit against his employer and its retirement plans. The complaint begins with a paragraph from a May 16, 2023[1], Wall Street Journal op-ed by Marlo Oaks and Todd Russ, the State Treasurers of Utah and Oklahoma, respectively:

> *"Many American workers don't realize that their hard-earned money is being used against them. Firms whose job is to deliver investment returns are instead weaponizing retirement funds, public pension and other investments in pursuit of*

> *nakedly ideological goals. It is perhaps the most severe breach of the fiduciary standard in American history."*

This perfectly encapsulates the cause of action. And it describes, albeit in somewhat harsher terms, what Judge Reed O'Connor of the United States District Court for the Northern District of Texas concluded.

The Employee Retirement Income Security Act of 1974 (ERISA) requires plan fiduciaries to act "solely in the interest of participants and beneficiaries and . . . for the exclusive purpose of providing benefits to participants and their beneficiaries."

ADVERTISEMENT

Picture Living Here
Homes.com

Report Ad Report Ad

Notwithstanding this clear and unambiguous language, Democrat administrations beginning with President Clinton's have allowed or encouraged plan administrators to consider factors other than maximizing retirement income. Intervening Republican administrations return to a strict interpretation of the law's requirements, only to be reversed during the following Democrat administration. A Federalist Society Review entitled "The 30-Year History of Diluting ERISA's Fiduciary Duty"[2] traces this oscillation.

On January 10, 2025, after conducting a four-day bench trial and then spending six months studying the testimony and exhibits, Judge O'Connor issued 70 pages of his Findings of Fact and Conclusions of Law[3].

Briefly stated, O'Connor found that American Airlines' plans and their administrators had breached their fiduciary duty of loyalty to the plan participants. He detailed the steps taken, and not taken, by plan administrators and investment managers.

Report Ad Report Ad

The opinion is a primer on ERISA, on the fiduciary duties of loyalty and prudence, and on how major institutional investments are managed, including who the players are and what they do. It is also a primer on ESG—environmental, social, and governance—and other woke concerns, and on how, in this case and others, Larry Fink wielded the influence created by the trillions of dollars of OPM (other people's money) BlackRock controls to bully corporations into adopting policies unrelated, and often detrimental, to their financial success.

ADVERTISEMENT

Picture Living Here
Homes.com

Report Ad Report Ad

"ERISA does not permit a fiduciary to pursue a non-pecuniary interest no matter how noble it might view the aim," writes Judge O'Connor. He notes that ESG investments underperform traditional investments, observing that during 2023, they earned about 8% as compared to 14% for non-ESG assets. On this last point, he has ordered the parties, no later than January 31, 2025, to submit to the court information to quantify any losses the retirement plans may have sustained as a result of ESG-focused investing.

Anyone participating in a corporate or governmental retirement plan would find it time well spent to study Judge O'Connor's opinion.

1 https://www.wsj.com/articles/a-historic-breach-of-fiduciary-duty-shareholder-proposals-proxy-advisory-climate-43baa5ba

2 https://fedsoc.org/fedsoc-review/the-30-year-history-of-diluting-erisa-s-fiduciary-duty

ADVERTISEMENT

Find Homes Near You
Homes.com

Search Homes You'll Love
Homes.com

Report Ad Report Ad Report Ad Report Ad

3 https://fcwpol.files.cmp.optimizely.com/download/33dcaf44d1b611ef94db7e6b1fe1324a

Related Articles

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

BRYAN P. SPENCE, individually and as a representative of a class of similarly situated persons, and on behalf of the AMERICAN AIRLINES, INC. 401(K) PLAN and the AMERICAN AIRLINES, INC. 401(K) PLAN FOR PILOTS,	§	
Plaintiffs,	§	Case No. 4:23-cv-00552-O
v.	§	
AMERICAN AIRLINES, INC., and the AMERICAN AIRLINES EMPLOYEE BENEFITS COMMITTEE,	§	
Defendants.	§	

DECLARATION OF ANDREW B. STEPHENS IN SUPPORT OF PLAINTIFF'S MOTION FOR ATTORNEYS' FEES, COSTS AND SERVICE AWARD

I, Andrew Bowman Stephens, of lawful age, upon personal knowledge, and pursuant to 28 U.S.C. § 1746, declare as follows:

1. I served as Class Counsel in the above-captioned matter and have done so throughout this litigation. I offer this declaration in support of Plaintiff's motion for attorneys' fees and service award under 29 U.S.C. § 1132(g)(1).

2. Plaintiff seeks payment of $6,589,800.50 in attorneys' fees for 5,859.1 hours of work reasonably expended by Class Counsel.

Qualifications and Expertise

3. I received my law degree from Georgetown University in 2007. I have litigated cases in courts across the country for nearly 20 years. I am licensed to practice in the States of Texas and New York, federal district courts for the Northern District of Texas, the Western District of Texas, the Southern District of Texas, the Eastern District of Texas, the Fifth Circuit Court of Appeals, and the United States Supreme Court.

4. Along with my law partner and co-counsel Heather Hacker, I founded the firm Hacker Stephens LLP in October 2020. HSLLP served as lead counsel for the Class in this case. HSLLP is a two-lawyer firm that focuses its practice on civil litigation in state and federal trial and appellate courts, with a particular focus on complex civil cases involving constitutional and statutory claims.

5. I have served as lead trial counsel in many cases in state and federal trial courts. I have won cases in trial courts against many Assistant United States

Attorneys and litigators from the largest, most prestigious, and most expensive law firms in the world.

6. Before founding HSLLP, I worked for the Texas Attorney General's Office as an Assistant Attorney General. As a trial lawyer at the Attorney General's Office, I was frequently asked to handle trial court proceedings in some of the State of Texas' most high-profile cases.

7. Before my state service, I worked for Shearman & Sterling LLP in New York for four years handling high-stakes commercial cases, federal securities fraud class actions, mergers and acquisitions litigation, insider trading investigations, and mortgage-backed securities litigation.

Circumstances of this Case

8. Plaintiff Bryan Spence retained HSLLP and Sharp Law to bring this lawsuit on behalf of him and the rest of the participants in American Airlines' employee 401K plan. Mr. Spence could not afford to retain the firm hourly, so HSLLP and Sharp Law agreed to take the case on a contingent fee basis and advance any necessary expenses for the case.

9. Because of the time necessary to pursue this case and litigate successfully against a Fortune 100 company represented by a global law firm with extensive resources, HSLLP was forced to turn down or not pursue other cases it would have otherwise taken.

10. While this case was being actively litigated, I spent most of my time working on this case. As of November 4, 2025, I have spent a total of 2,019.9 hours

working on this case. Because HSLLP is a two-lawyer firm, this was a significant commitment of our firm's resources. Any time I spent on this contingency case took away from available time I had to bill hourly clients, and because this was a contingency case, there was no guarantee of recovery. Put simply, I had no reason to spend more time working on this case than I thought was necessary to win.

Compensable Time and Billing Judgment

11. HSLLP's normal billing practice is to prepare and maintain contemporaneous records of time spent on particular matters. Consistent with that practice, HSLLP kept contemporaneous records of time spent working on this case. If the Court finds counsel's declarations insufficient to substantiate Class Counsel's time spent on the case, Class Counsel will provide them to the Court.

12. I have reviewed HSLLP's time records in this case and exercised billing judgment to remove hours I deemed excessive, redundant, or otherwise unnecessary. In addition, I removed all of our travel time and did not include any of the time our legal assistant spent working on this case.

13. In total, I eliminated 287.9 hours of HSLLP's attorney time in the exercise of billing judgment. That accounts for more than 10% of all 2,742.1 attorney hours originally expended by HSLLP.

14. Subtracting the 287.9 attorney hours that we cut from the total time, the remaining compensable time for HSLLP totals 2,454.2 hours.

15. HSLLP also incurred expenses of $8,990.76 in this case but we have not included our expenses in our request for attorneys' fees.

16. Based on my experience, the work performed and the time we spent on this case is reasonable and justified for a case of this complexity, the unique nature of this case, the expertise required, and the relief achieved. I do not know the amount of time that defense counsel spent on this case, but I would be very surprised if they did not spend significantly more time on the case than Class Counsel. I have asked defense counsel to provide this information but to date they have refused to do so.

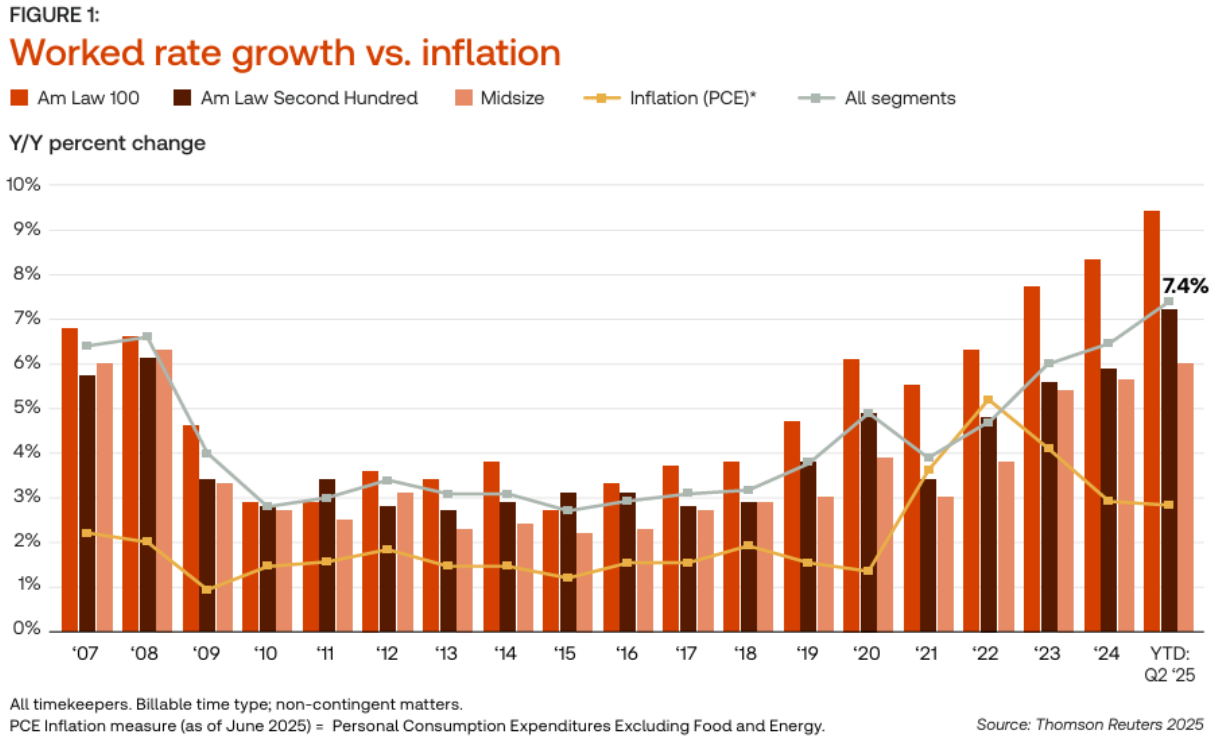
Rates

17. The reasonable hourly rate proposed by HSLLP for our work on this case is $1,250/hour.

18. HSLLP's background, expertise, and skill, evidenced by their victory in this case over some of the most expensive ERISA litigators in the country, show that a reasonable rate for our work on this case is the rates charged by lawyers at large law firms who are hired to litigate ERISA class actions and other complex federal cases. *See* Appx. 079-81 (Declaration of Randall W. Miller) at ¶¶ 12-20.

19. The rates requested are also reasonable based on the rates awarded to other attorneys of similar skill and experience who litigate ERISA class actions and other complex federal cases in the Dallas-Fort Worth area. When considering rates that have been awarded in other cases, it is essential to recognize that there has been a significant increase in billing rates over time. According to a recent report by Thomson Reuters "rates have surged 122% since 2006, with especially sharp acceleration after 2019, with rates jumping 61% above baseline to double that metric in just six years." A copy of this report is attached as Exhibit A.

20. The Thomson Reuters report provides data on the annual % increase in law firm billing rates for each year since 2002. The report is based on results from 195 US-based law firms and interviews with 2,246 lawyers. *See* Exhibit A at 19. Page 3 of the report includes the following chart showing the annual % increase in billing rates by year:



The following chart shows the annual % increase in billing rates from 2012 to 2025 based on the above chart:

Thomson Reuters Billing Rates % Annual Increase

Year	% Increase (AmLaw 100)	% Increase (All Segments)
2012	3.60%	3.40%
2013	3.50%	3.10%
2104	3.80%	3.10%
2015	2.60%	2.70%
2016	3.30%	3.00%
2017	3.70%	3.10%

2108	3.80%	3.20%
2019	4.70%	3.80%
2020	6.10%	4.90%
2021	5.50%	4.00%
2022	6.30%	4.80%
2023	7.80%	6.00%
2024	8.30%	6.50%
2025	9.40%	7.40%

21. Applying the annual % increase in rates from this report to rates that have been awarded by courts in the Northern District of Texas in other cases, results in a 2025 average billing rate of $1,330 per hour for partners. Below is a table summarizing each of these awards and the 2025 rate equivalent using the data from the Thomson Reuters report:

NDTX Attorney Fee Awards at 2025 Rates (using Thomson Reuters annual rate increases)				
NDTX Case	**Law Firm**	**Billing Rate Awarded**	**Billing Rate Year**	**2025 Billing Rate**
Alto-Shaam, Inc. v. Manitowoc Co., No. 7:09-CV-018-O, 2012 WL 12978015, at *6 (N.D. Tex. Feb. 2, 2012) (O'Connor, J.)	Baker Botts LLP	$725	2012	**$1,414**
Hoffman v. L & M Arts, No. 3:10–CV–0953–D, 2015 WL 3999171, at *3 (N.D. Tex. July 1, 2015)	Wilkie Farr & Gallagher LLP	$810	2013	**$1,526**
Hill v. Schilling, No. 3:07-CV-2020-L, 2022 WL 1321548, at *5 (N.D. Tex. May 3, 2022)	Locke Lord LLP	$830	2019	**$1,261**
Advanced Physicians, S.C. v. Connecticut Gen. Life Ins. Co., No. 16-cv-02355, 2021 WL 6428370, at *6 (N.D. Tex. Dec. 17, 2021)	Akin Gump Strauss Hauer & Feld LLP	$862	2021	**$1,170**
Franciscan Alliance, Inc., v. Becerra, 681 F. Supp. 3d 631, 643-45 (N.D. Tex. 2023) (O'Connor, J.)	Becket Fund	$1,000	2022	**$1,277**
			Average Rate =	**$1,330**

22. In addition to the cases in the chart above, in *Main v. American Airlines, Inc.* the Court approved class counsel's request for an award of $6,600,000 in attorneys' fees for approximately 2,500 hours of time. *See* Memorandum of Law in Support of Plaintiffs' Motion for Approval of Attorneys' Fees, Expenses, and Service Awards, *Main v. American Airlines, Inc., et al.*, No. 4:16-cv-00473-O, ECF No. 130 at 22 (N.D. Tex. Dec. 22, 2017) ("In total, Class Counsel have expended approximately 2,500 hours of time on the matter through the date of this motion"); *see* Order, *Main v. American Airlines, Inc., et al.*, No. 4:16-cv-00473-O, ECF No. 138 at 2 (N.D. Tex. Feb. 21, 2018) ("Class Counsel's request for an award of $6,600,000 in attorneys' fees is APPROVED."). *Main* awarded attorneys' fees of approximately $2,640 per hour in 2018. Using the annual rate increases set forth in the Thomson Reuters report results in a 2025 rate of $3,799-$4,201 per hour for the attorneys' fees in the *Main* case.

23. Class Counsel's requested rates are reasonable rates for attorneys with similar experience who represent plaintiffs in complex litigation and class action cases. *See* Appx. 085 (Declaration of Warren Tavares Burns of Burns Charest LLP) at ¶ 9 ($1,300-$1,500/hour rate for attorneys with graduation years 1996 to 2004, $1,050-$1,400/hour rate for graduation years 2005 to 2014, $800-$900/hour for graduation years 2013 to 2019, $700-$800/hour for graduation years 2020 to 2021).

Lodestar Amount

24. Based on the hours reasonably expended in this litigation by HSLLP (2,454.2) and HSLLP's reasonable proposed hourly rate ($1250), the lodestar amount for HSLLP's work is $3,067,750.00.

25. In light of my skill and experience, market rates, the "landmark" nature of this litigation, the success of the case for the class, and the fact that it was litigated by small firms against a team of some of the most expensive ERISA lawyers in the country, the proposed attorneys' fees are reasonable.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: November 4, 2025.

/s/ Andrew B. Stephens
Andrew B. Stephens

EXHIBIT A

Law firm rates in 2026

The engine that powers value

In partnership with

TVPi

Thomson Reuters Institute

Executive summary

When it comes to the subject of rates, law firms have arguably never had it better. While businesses everywhere have struggled with inflation, supply chains, and market volatility over the last few years, law firms discovered they could raise rates they charge clients at historically rapid paces — and clients would pay, consistently, year after year, in a trajectory that defied inflation and has turned the last decade of conventional pricing wisdom on its head.

The secret sauce, firms have come to believe, was simple: Deliver more value per hour and you can charge more per hour. Law firms' investment in technology, particularly generative AI (GenAI) tools, would make lawyers so much more effective and efficient each year that the firms and clients could split the gains in value.

The secret sauce, firms have come to believe, was simple: Deliver more value per hour and you can charge more per hour.

Indeed, efficiency initiatives, they believed, would eliminate waste; and premium talent would command premium rates. Every firm had its own formula for optimization — some maintaining ironclad realization discipline, others offering strategic discounts to win volume, while still others absorbing write-offs to preserve client relationships.

Yet, many law firm leaders thought that surely one approach had to be superior, surely there was a best practice waiting to be discovered.

However, when we analyzed how hundreds of firms actually operate, we found something unexpected: Law firm rate and realization systems work like jet engines, with four distinct stages — intake, compression, combustion, and exhaust — that must operate in harmony. Standard rates flow through worked realization, then post-work realization before finally emerging as collected revenue that powers the next cycle. More surprisingly, many firms naturally cluster in different groupings based on their approach — yet despite radically different approaches to discounting and realization, almost all law firms ended up collecting roughly the same amount per hour. The market, it seems, has its own gravitational pull that drew everyone toward equilibrium regardless of their individual strategy.

This discovery would be merely academic if the weather forecast looked clear — but it's not, and that's making people nervous. The same firms pushing through record rate increases are watching their collection realization wobble in ways that feel uncomfortably familiar to anyone who survived the aftermath of the global financial crisis in 2008.

The GenAI investments that justified premium pricing now demand premium spending exactly when firms should be conserving cash. Further, clients are voting with their feet, shifting work downstream to lower-cost providers even as they pay higher rates to their primary firms. The warning lights aren't flashing red yet, but they're definitely amber — and these warnings are multiplying.

The firms that thrive in the coming environment — whether that's continued prosperity or economic reckoning — won't be those with the perfect strategy. They'll be those whose leaders understand the engine they've built well enough to reconfigure it in flight. Because when you're pushing systems to their limits and the horizon looks uncertain, the question isn't whether you have the optimal configuration, it's whether you understand your configuration well enough to keep the engine running when conditions change.

This report reveals not just how we got here, but what actually drives performance in legal pricing — and why everything firms think they know about rate strategy might be wrong at exactly the moment they need it to be right.

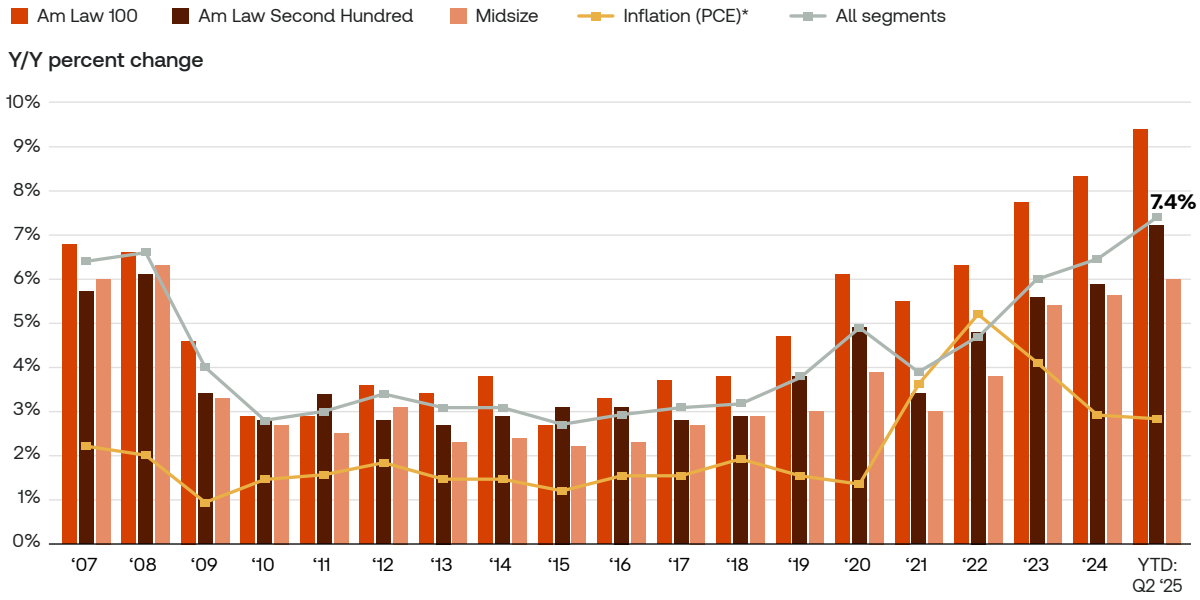
© 2025 Thomson Reuters

The rate growth phenomenon

The legal market's rates-setting process has evolved from merely keeping pace with inflation to demonstrating remarkable pricing power that far exceeds base macroeconomic pressures. While inflation remained relatively contained between 2007 and 2019, averaging around 1.6%, law firms across all size segments consistently commanded rate increases that were double or triple the inflation rate through the end of the 2010s. This was not simply cost-of-living adjustments — it represented genuine pricing power driven by the specialized nature of the industry and relatively stable demand.

FIGURE 1:

Worked rate growth vs. inflation



All timekeepers. Billable time type; non-contingent matters.
PCE Inflation measure (as of June 2025) = Personal Consumption Expenditures Excluding Food and Energy.

Source: Thomson Reuters 2025

The real story emerged during and after the pandemic, when inflation surged to 3.6% in 2021 and peaked at 5.2% in 2022. Law firms did not just match the increases — they accelerated past them, with rate growth averaging 2.3 percentage points above inflation across the post-2020 period. This represented a significant acceleration from the 2010-2019 period, when rate growth averaged just 1.5 percentage points above inflation — and this higher post-pandemic average held despite inflation briefly outpacing rate growth in 2022.

By 2024, inflation had moderated to 2.9%, yet rates continued their upward trajectory with growth reaching 6.5% across all segments. The acceleration has continued into 2025, in which early indicators show worked rate growth of 7.4% against inflation of just 2.8%. The Am Law 100 segment is pushing even further ahead at 9.4%, while the Am Second Hundred and Midsize firms follow similar trajectories, achieving 7.2% and 6.0% growth, respectively — more than double the inflation rate.

Importantly, this pricing dynamic is not exclusive to the market in the United States. Comparable trends have been observed in other regions, including the United Kingdom, Australia,[1] and New Zealand.[2]

1 *2025 Report on the State of the Australia Legal Market*; Thomson Reuters Institute (Aug. 25, 2025); *available at* https://www.thomsonreuters.com/en-us/posts/legal/australia-legal-market-2025.

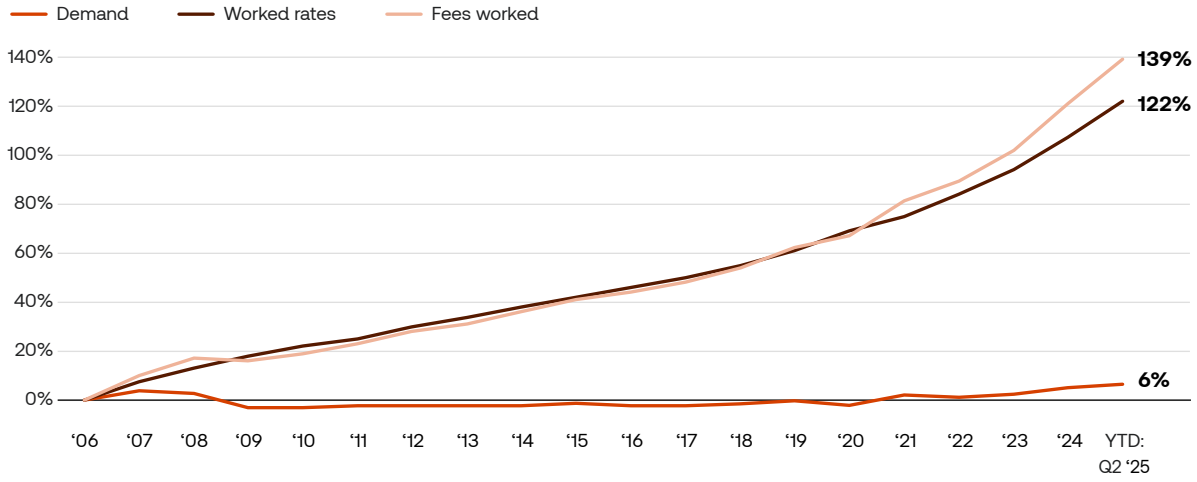
2 *2025 Report on the State of the New Zealand Legal Market*; Thomson Reuters Institute (March 18, 2025); *available at* https://www.thomsonreuters.com/en-us/posts/legal/new-zealand-legal-market-report-2025.

© 2025 Thomson Reuters

FIGURE 2:

Rates vs. demand dynamics

Indexed change since 2006



Source: Thomson Reuters 2025

Since 2006, law firms have fundamentally changed how they generate revenue due to two key factors. *One*, legal demand has remained relatively stable, fluctuating modestly around baseline levels even during major disruptors like the global financial crisis and the pandemic. By 2025, demand is only 6% higher than it was nearly 20 years ago. And *two*, worked rates have surged 122% since 2006, with especially sharp acceleration after 2019, with rates jumping from 61% above baseline to double that metric in just six years.

Could it be that the need for legal services only grew by 6% over these years? No, but the need for legal services on a billable hour basis was counteracted by efficiency improvements. Given the scale of growth most clients have seen in recent years, it's not surprising that the prices of legal services that protect and enable clients' revenues justify sky-high evaluations.

As a result of these two factors, fees worked have grown 139% over the past 20 years, and nearly all that growth stems from rate increases. Law firms in the aggregate have transitioned from volume-based growth to value-based growth, capturing more revenue from the same level of market activity. It would be a mistake however to assume that market activity has become completely divorced from pricing power.

Thomson Reuters Institute Insights

Changing measures of productivity

Hours per lawyer has long been the industry's standard productivity measure. However, in light of both recent performance data and GenAI's transformative potential, this metric increasingly fails to capture the primary mechanisms driving firm performance over the last two decades.

As GenAI enables lawyers to deliver more legal services within each billable hour, firms must develop new measures of individual lawyer utilization. This isn't just an internal imperative—it's essential for demonstrating to clients that premium rates reflect enhanced value delivery, not simply the same service at a higher price point. Without evolved metrics that capture productivity gains, firms risk appearing to charge more for less, a dangerous proposition in a marketplace where their competition is striving to show clients they're getting more than ever.

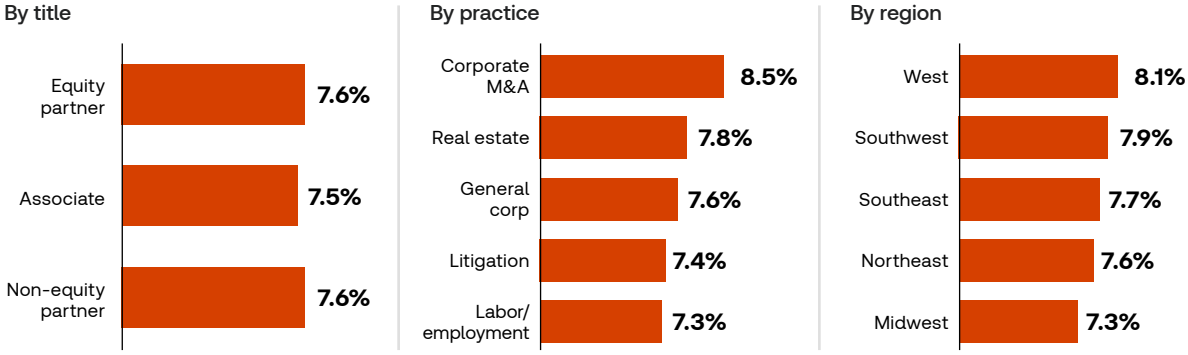
© 2025 Thomson Reuters

The demographics of rate growth

Rate increases were widespread across all regions within the US, with few major geographic exceptions. However, the strongest growth was concentrated in regions that have recently led in demand expansion. These regional hot spots continue to set the pace for rate acceleration, indicating that geographic demand trends remain a reliable predictor of pricing leverage.

FIGURE 3:

Demographics of rate growth



Source: Thomson Reuters 2025

This trend isn't as true from a practice perspective. Premium-priced transactional practices, such as mergers & acquisitions and real estate, continue to experience the highest rate growth even during lower volume periods in recent history. Counter-cyclical practices such as litigation and labor/ employment also showed nearly comparable growth, despite having outperformed in demand over the last few years. Currently, rate growth mirrors the practices in which demand is growing fastest, but recent history shows that overall demand performance to be a more reliable leading indicator of pricing power rather than looking at it on a by-practice basis. This is likely because many firms' rate increases follow an aligned structure, enabling stronger practices with higher demand to potentially lift lower performing practices.

Rate differentials across titles also remain significant, especially when other factors are weighed in. For example, non-equity partners in Top 50 law firms are seeing stronger rate growth compared to their peers in firms ranked 51–100, likely due to brand positioning and client tolerance for premium billing. Additionally, the gap between equity partners and associates continues to widen, especially in high-demand practices.

© 2025 Thomson Reuters

Realization margin and cost factors

While typically worked rates are a great indicator of the market dynamics between firms and their clients, looking at just the headline worked rate growth figure can be misleading. Thus, when analyzing how rates drive revenue, we need to bring in realization figures against those worked rates. In our recent *Q2 2025 Law Firm Financial Index*, it was noted that firms saw an unseasonal downtick in realization in the second quarter compared to the first. While the timing of this movement is alarming (given that traditionally, realization improves throughout the year), firms have seen a long-term decline in realization, which has been consistent since 2021.

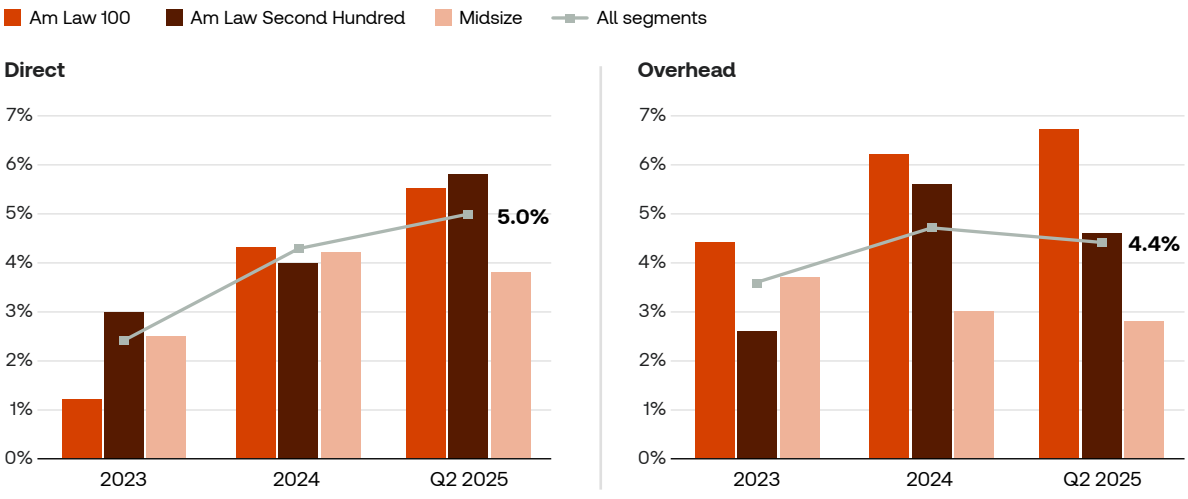
That means, even as firms struggle with declining realization, they continue to see a net benefit from the aggressive growth in worked rates compared to 2023. As realization becomes a larger component of the equation, we can see noticeable shifts in worked rates through the year as realization against standard rates climbs or falls. Law firms saw an example of this in 2025 when worked rates started in January with a 7.1% increase that accelerated to 7.4% by the end of the second quarter. However, given Q2's atypical fall in collections realization, the small acceleration in worked rates has been effectively neutralized.

This becomes particularly worrisome given the expense pressures that firms are dealing with and using as justifications for record high increases.

FIGURE 4:

Expenses per lawyer growth

Rolling 12-month change



Source: Thomson Reuters 2025

Even as they rake in revenue through record year-over-year rate growth, law firms are seeing their own spending rise substantially. Direct costs[3] per lawyer full-time equivalent (FTE) are up 5.0% through Q2 on a rolling 12-month average, and overhead expenses aren't far behind at 4.4%. In other words, costs are rising nearly as much as rates.

3 For these purposes, *direct* expenses refer to those related to fee earners, primarily the compensation and benefits costs of lawyers and other timekeepers. Overhead (or indirect) expenses refer to all other expenses of the firm, including occupancy costs, administrative and staff compensation and benefits, technology costs, business development expenses, and more.

© 2025 Thomson Reuters

And, interestingly, there are some positives to that equation. First, investments in technology as well as higher-salaried, more experienced attorneys can help firms increase the value of their average billable hour. Second, higher costs may give firms additional cover with clients to continue pressing rate increases to some degree, although quantifying this is obviously very difficult.

On the negative side, of course, the continuation of higher costs carries potential problems. In the past, when law firms are in an intense growth mode like they are now, expenses can become *sticky* and hard to control. Revenue on the other hand can vanish seemingly overnight.

So far this year, the market's being buoyed by the current economic environment, but that may not always be the case, and we're already seeing some shifts — and even changes in the nature of those shifts.

FIGURE 5:

What clients paid in rates

Average law firm worked rate increased by

7.4%

YTD: Q2 2025

Company size by annual revenue	Partner	Of Counsel	Associate
Under $500M	2.3%	0.0%	-2.0%
$500M-$2B	-5.1%	-2.5%	-6.1%
$2B-$10B	-4.5%	-6.6%	-5.3%
$10B+	-12.2%	-6.4%	-7.0%

Source: Thomson Reuters 2025

While the average law firms' worked rate increased by 7.4% through Q2 2025, clients on average have seen their spending per hour decrease compared to the same period in Q2 2024. Indeed, the largest companies are seeing the most sizeable reduction in legal spend per working hour.

The may be happening because clients appear to be moving work to lower-cost law firms in order to save money. This pattern of shifting work downstream has been going on for several years, but recent data shows clients are becoming notably more aggressive on this point.

While the disparity between the worked rate increases reported by law firms and the actual paid rate results reported by clients has been small in past years, the gaps today are widening, suggesting an acceleration of the trend.

Indeed, the growth of this trend may signify that clients — especially larger ones — have found a way to respond to the ever-increasing rates being charged by some of the largest law firms.

© 2025 Thomson Reuters

Thomson Reuters Institute Insights

Mobile demand – Everyone wins?

Over the last few years, shifts in demand demonstrate that legal market dynamics don't have to be a zero-sum game. Clients gain significant cost benefits by moving price-sensitive matters to lower-cost providers. Meanwhile, the scale of Am Law 100 firms means that even a 1% decline in their demand can translate into a 3% gain for Am Law Second Hundred or Midsize firms, fueling their growth.

Yet the largest firms benefit as well. By releasing more price-sensitive work, they create capacity to push rates higher on the complex, high-value matters that remain. When clients continue to engage Am Law 100 firms despite premium pricing, it signals that work is genuinely strategic—and firms can price it accordingly.

This dynamic creates natural opportunities for strategic partnerships between firms, clients, and alternative legal providers. By developing structured workflows that optimize where different types of work are performed, all parties can capture greater value from this market evolution.

© 2025 Thomson Reuters

Pre-work vs. post-work realization: Building the firm's jet engine

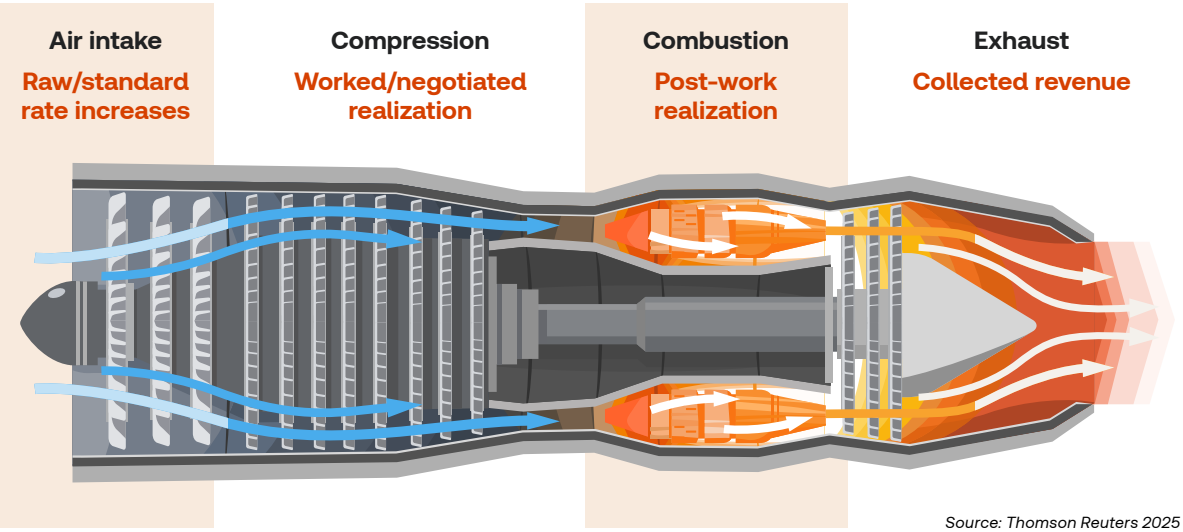
This brings us to the question that's haunted law firm management for decades: *Is there a single superior rate strategy?* Not just tactics or best practices, but a fundamental alignment of rate setting, discounting, and realization principles that consistently outperforms, regardless of firm size, geography, or practice mix?

To start answering that question, we looked at how different firms emphasized different aspects of their rates and realization systems, then compared their overall firm performance to account for extraneous benefits and costs. What we found is certainly interesting and offers new insight, but to get there, we need to change the way we look at the problem. Imagine if firms' rates and realizations systems worked like a jet engine.

Even if you don't know how a jet engine works (and most people don't), once you understand the parallel, you'll never look at rate strategy the same way again.

FIGURE 6:

Comparing the way a jet engine works to law firm billing



Source: Thomson Reuters 2025

Stage 1: Intake — Standard rate increases

A jet engine starts by drawing in massive amounts of air through the front fan — about 1,200 pounds per second in modern engines. This isn't a gentle process; rather it's voracious consumption. The key is volume — the more air pulled in, the more potential power the engine has to work with.

Law firms operate much the same way with their standard rate increases. These rates are the raw material (or *air*, in our jet engine allegory) that feeds the entire system. Some law firms go all out on aggressive annual increases of up to 15% on their standard rate, while other firms in the very same segment may push more modest 3% to 5% increases.

© 2025 Thomson Reuters

Just like an engine can choke on too much air without proper downstream processing, aggressive rate increases without the infrastructure to process them just create turbulence and client resistance. Similarly, if firms are too cautious with their standard rate increases, it could take the air out of the rest of the system further down the line.

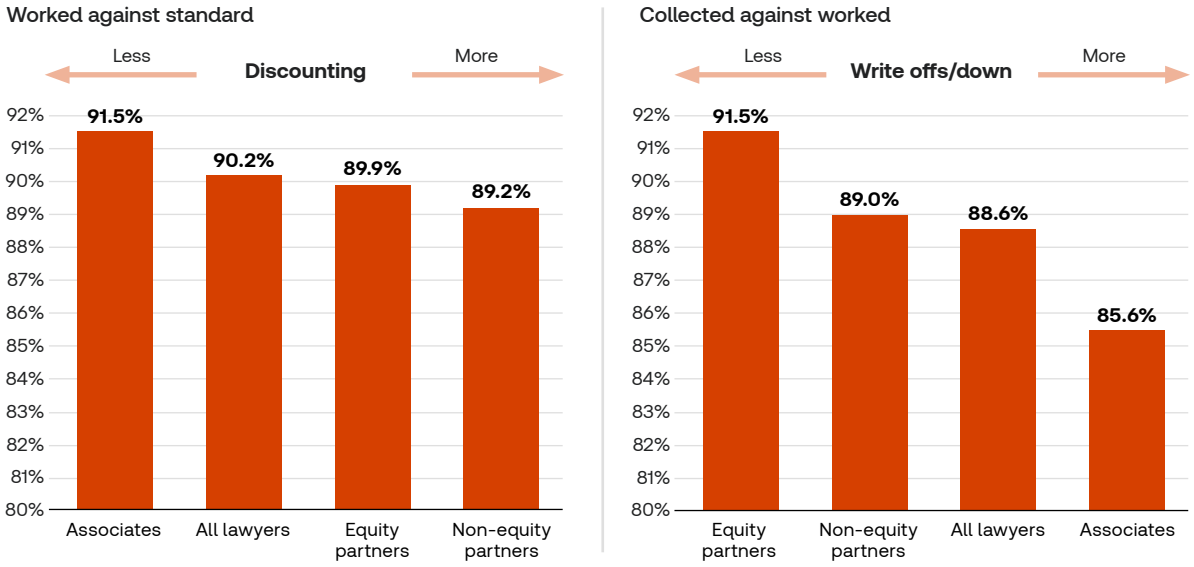
Stage 2: Compression — Worked or negotiated realization

After the intake, the air rushing into the engine gets squeezed through a series of compressor blades, increasing pressure by up to 40 times. This is where potential energy gets concentrated — and without proper compression, the engine is just moving air around without purpose.

This is the critical moment within law firms in which the standard rates meet the compression chamber of client negotiations and market forces and the real-life pressures come to bear. Some firms run high-compression systems, maintaining worked realization as high as 95% through disciplined pricing committees and limited pre-matter discounting. Other firms operate low-compression models, immediately releasing pressure through aggressive alternative fee arrangements and volume discounts that can bring them down to a 75% to 80% realization.

FIGURE 7:

Realization by title - YTD: June 2025



Source: Thomson Reuters 2025

This is where some of the more systematic considerations come into play that help balance the whole setup. Law firms tend to offer very few discounts on associate rates in early billing stages, with the average firm's worked realization against standard for associates being 91.5% — notably higher than partner rates that are currently in below 90%.

This occurs because many law firm leaders know that further down the line, associate work will be more likely to be written off — and that means associates need greater intake and compression (higher standard rates and worked realization) in order to compensate for inefficiencies in the post-work half of the system. Conversely, partners (especially equity partners) tend to offer heavier discounts in this pre-billing stage but are rarely written down to the same degree as associates in the post-work portion.

One potential reason for this occurs in the third stage.

© 2025 Thomson Reuters

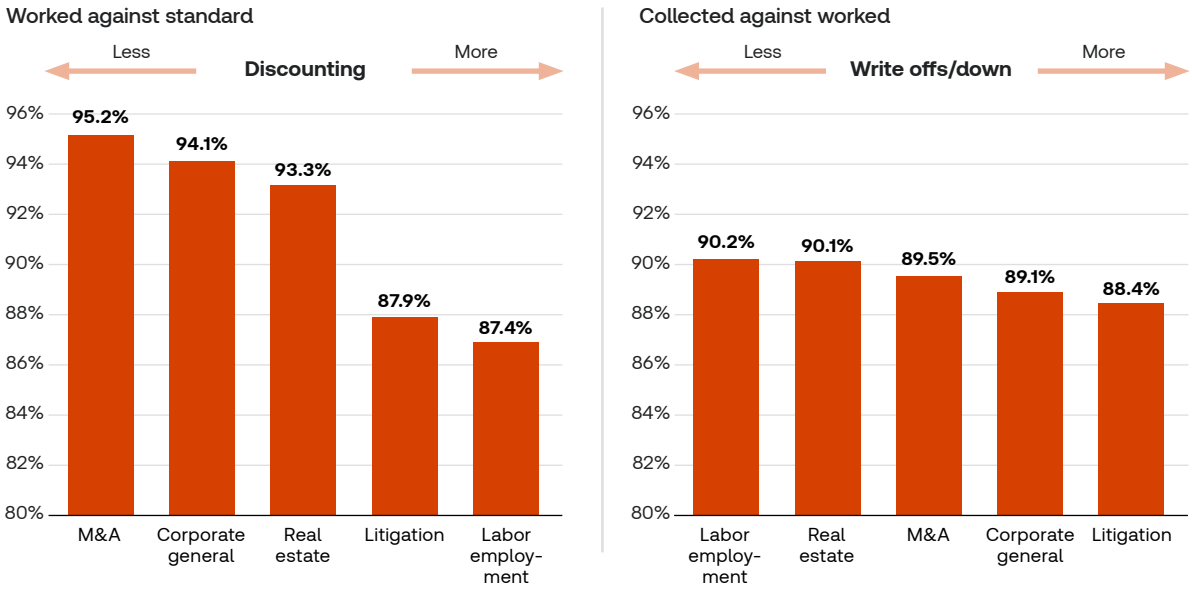
Stage 3: Combustion — Post-work realization

In an engine, the highly compressed air gets injected with fuel and ignited, creating controlled explosions — however, only about 25% of the air actually participates in this combustion. The rest acts as a cooling buffer to prevent the engine itself from melting.

In law firms, this is where strategy becomes execution. Some matters are resolved cleanly, collected at full worked rates, while other work requires write-downs, appeals, or relationship preservation discounts. Like that 75% of air that acts as a cooling system, some of this discounting might actually be protective. Firms that push for 100% post-work realization might generate maximum thrust from each transaction, but if they're not offering enough discounts, they risk client relationship damage — the equivalent of melting your engine. This may also be part of the reason why associates' rates are discounted so much compared to equity partners; these discounts act as the *cooling buffer*, protecting higher partner rates from discounting and mitigating client pushback.

FIGURE 8:

Realization by practice - YTD: June 2025



Source: Thomson Reuters 2025

There is more to the equation than balancing pre-and-post work realization, however. Some practices simply run more efficiently across the system than others. For example, transactional practices such as real estate and M&A keep write-offs tightly controlled in both stages, while litigation, on the other hand, sees far more write-offs than other practices.

Neither approach is inherently wrong, but each requires different downstream handling — each its own engine setup, if you will — and this is where conventional wisdom about realization falls apart.

Our data reveals that firms aren't simply trying to maximize realization at every stage; they're making calculated tradeoffs throughout the system, using lower realization in one area to protect or enable higher performance in another.

© 2025 Thomson Reuters

The firms running high intake (aggressive rate increases) with low compression (heavy discounting) and poor combustion efficiency (write-downs) are like engines gulping air through broken compressors—lots of noise and heat, incredibly wasteful without the punch to make up for it. Conversely, exceptional compression with timid intake is equally flawed, like a precision engine starved of fuel—perfect efficiency, wasted potential. Ironically, each could excel by trading just a touch of their strength to shore up their weakness.

It's important to understand that you can't evaluate any single stage in isolation. The best realization strategy isn't about maximizing any single metric, rather it's about finding the right configuration for your firm's market position, client base, and strategic goals.

Stage 4: Exhaust — Collected revenue

In the exhaust stage, the expanding gases blast out the back of the jet engine, creating thrust. But crucially, those gases also spin turbines on their way out, which power the compressor blades up front. It's a self-sustaining cycle in which output directly feeds back into the engine.

Similarly, what flows out as collected revenue in a law firm doesn't just represent the end of the process — it powers the beginning. Strong collection performance creates confidence for more aggressive standard rate increases next cycle. Weak collections undermine your ability to push your rates higher, creating a negative feedback loop that can spiral into declining performance. This feedback mechanism explains why some firms can sustain 8% to 10% annual standard rate increases while others struggle to push 3% to 4%.

As the old saying goes: *Nothing succeeds like success*. However, success isn't defined by year-end results alone, it depends on how efficiently the entire engine runs. Firms with strong collection discipline can reinvest that credibility into higher rates, while those with collection problems find themselves in a vicious cycle.

So, this leads us back to our initial question: *Is there a single superior rate strategy?* To find out, we turned to a much more in-depth analysis of the data to see how different firms with different strategies performed vis-à-vis one another.

The flight path to better financial performance

We let firms group themselves naturally, based on two key relationships:[4] How much firms discount from their standard rates (compression efficiency); and how much they collect compared to what they work (combustion-to-exhaust efficiency).

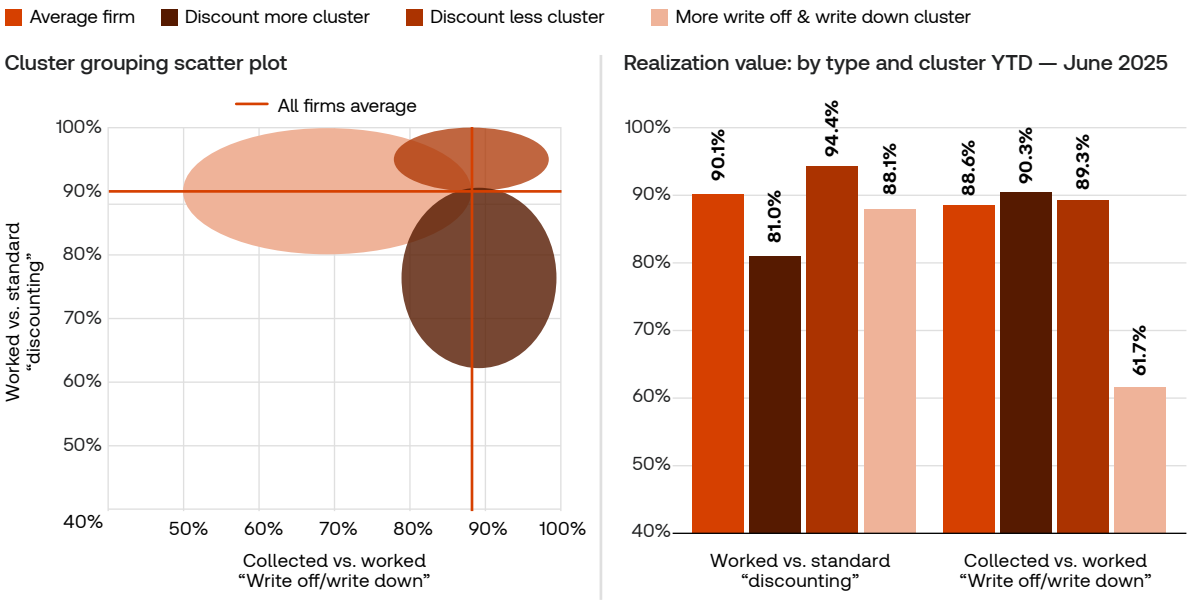
The analysis revealed something fascinating: US firms have naturally clustered into three distinct configurations, represented by two large groups representing mainstream approaches, and one smaller group of outliers taking one strategy to its upper limits. Let's look at each configuration in turn.

4 To identify behavioral patterns among firms, an unsupervised learning model was applied using the k-means clustering algorithm. Because the model does not require predefined labels, it was able to explore the internal structure of the data and automatically determine that the optimal number of clusters and sort firms into each grouping.

© 2025 Thomson Reuters

FIGURE 9:

Cluster analysis diagram



Source: Thomson Reuters 2025

Configuration 1: The high-bypass engine (Discount more strategy)

These firms intentionally release pressure early and often, starting with a higher standard rate but discounting early and often. In this way, they're operating like a high-bypass engine — extracting less energy as the engine runs but making up for it by starting the system with a whole lot of additional air.

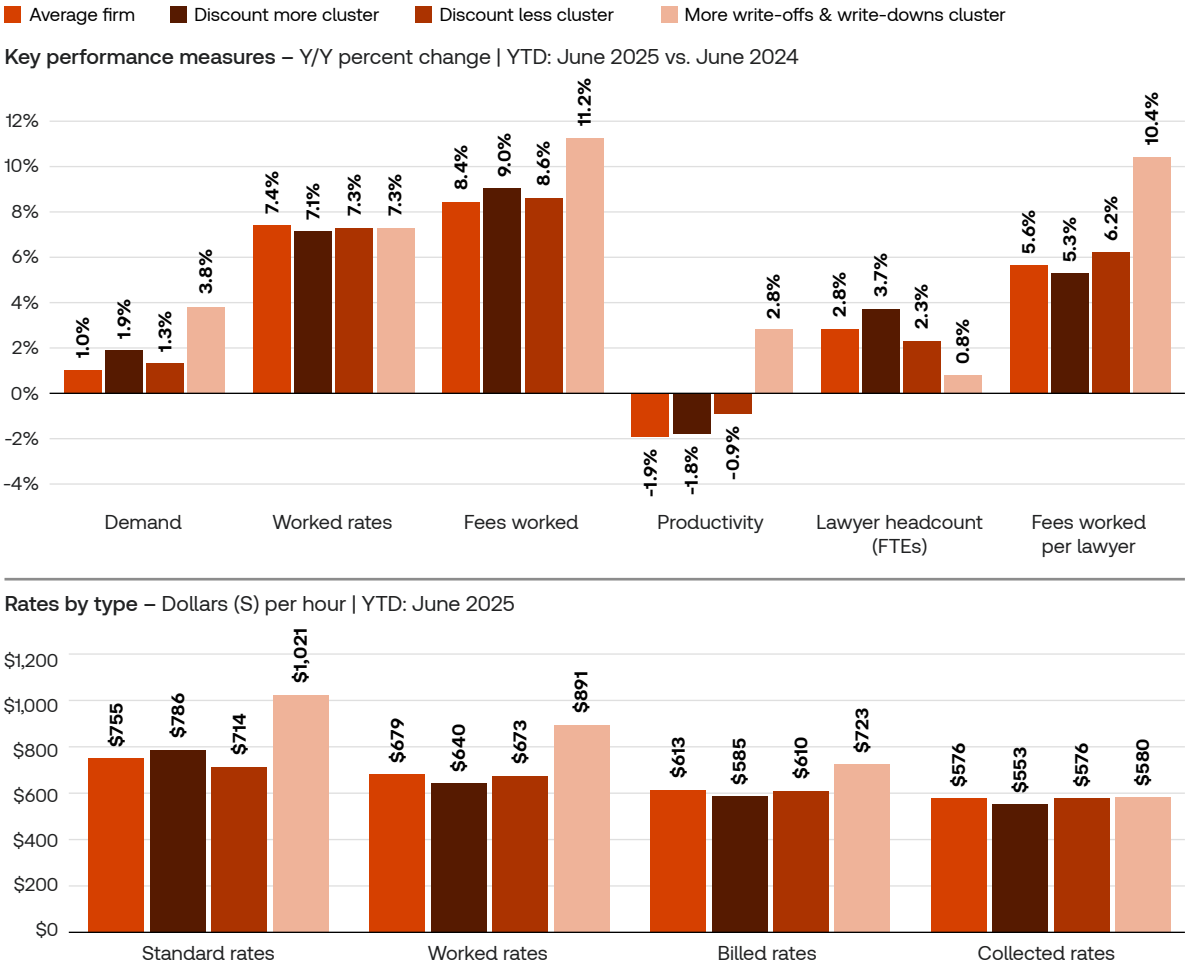
Our data showed that these firms achieved better demand growth through the first half of 2025 than the average firm (1.9% growth compared to 1.0% for the average). While this sounds impressive, that higher demand barely translates to greater fees worked (these firms saw fees worked grow by 9.0% compared to the all-firm average of 8.4%). Further, these firms lagged significantly in productivity when measured in terms of hours per lawyer.

So, when you calculate fees worked per lawyer, these firms are running slightly *behind* the pack. It's like running your engine at higher RPMs but in a lower gear — you're seeing lots of activity but not necessarily moving as fast as you'd think.

© 2025 Thomson Reuters

FIGURE 10:

KPIs & Rates for cluster analysis



Source: Thomson Reuters 2025

Configuration 2: The high-compression engine (Discount less strategy)

These firms run their engines hot and tight, maintaining the highest worked vs. standard realization across all stages with minimal pressure loss throughout the system and demonstrating exceptional compression and clean combustion. Indeed, one may expect this precision-engineered system to climb higher—generating more through its efficiency. But market resistance keeps it cruising the same as everyone else, with demand growth sitting right at average (1.3% compared to the average of 1.0%) and fees worked similarly unremarkable.

Yet, these firms have earned the market position to run without compromise, maintaining rates with smaller discounts — however, this premium positioning doesn't translate to premium growth.

It's like flying a supersonic jet in commercial airspace. You've got the power to break away, but the traffic keeps you cruising at the same speed as everyone else.

Configuration 3: The afterburner engine (More write-offs & write-downs)

These firms appear to experience a massive drop-off between their standard rates and their collected revenue, essentially injecting extra fuel into their exhaust stream and lighting it on fire. In fact, it's

© 2025 Thomson Reuters

similar to a fighter jet's afterburner, it's deliberately inefficient, burning through resources that could theoretically be conserved.

Somehow, it's working. Much like an afterburner, the strategy seems to be providing results. These firms were the only cluster to display noticeably higher demand growth than the average firm and also displayed superior productivity gains. They are creating pricing inefficiency for tactical advantage by accepting write-offs and write-downs (burning extra fuel) to generate relationship thrust and keep clients happy in order to maintain velocity in competitive situations.

Yet all those write-offs and write-downs, what they collect is almost exactly what everyone else collects. (Although we should note this is a smaller, more varied group with big differences in individual results. Clearly, some firms have mastered MiG Alley while others are getting burned badly.)

The market forces its own balance

The most interesting conclusion from this grouping experiment is that despite their wildly different approaches, all three clusters of law firms ended up collecting between $553 and $580 per hour. And that's right in line with the all-firm average, despite some groups starting out with standard rates at nearly double that figure.

Three different engine configurations with three different strategies all ending up at the same destination. And that is most likely the result of market forces — client expectations, competitive pressures, economic realities, and more — acting as a gravitational pull, moving everyone toward a similar equilibrium regardless of the path they take to get there.

So, if everyone ends up in roughly the same place, does strategy even matter? Absolutely — but not in the way most firms think.

The choice isn't about finding the best configuration that outperforms all others, or adhering to industry dogma that assumes all engines run the same way. Rather, it's about choosing the approach that best fits your firm's culture, client relationships, and operational strengths. For example, a firm with strong project management and lean operations might thrive as a high-bypass engine; while a firm with premium brand position and disciplined partners might excel with a high-compression engine.

Of course, firms will likely find themselves in positions where changes may need to be made, where realization needs to be tightened and inefficiency addressed, but these adjustments must be made with full understanding of your specific engine configuration and how your system actually operates — and that means understanding what makes your firm different.

Thomson Reuters Institute Insights

How to actually improve your firm's engine

Market forces may drive convergence, but that's an average—not a ceiling. Within any engine setup, leaders pull far ahead while others stall. The lesson isn't to accept limits but to keep refining your own design.

Start by benchmarking against true peers with similar configurations. Even high-bypass engines can pick up speed by improving realization, while firms running too tight often need more flexibility. Look for practical wins: smarter write-off strategies that protect client ties while enforcing discipline, or sharper value propositions that make rate increases credible. Above all, seek investments and service innovations that give clients clear reasons to reward you—not just follow market momentum.

© 2025 Thomson Reuters

What actually makes firms different

Here's the thing about engines—clients can't see them. They don't know if the law firm they're hiring is running a high-bypass, a high-compression, or an afterburner configuration. They can't peer under the hood to admire the firm's compression ratios or realization rates. All they experience is the ride — and that raises a crucial question: If all these different engine configurations end up at the same destination, what makes clients choose one firm over another?

To answer this question, we analyzed Thomson Reuters Market Insights data, which draws from hundreds of structured interviews with general counsels about their law firm relationships and hiring decisions. The research examined both how these legal buyers value their current firms' services and what criteria they prioritize when engaging new counsel.

Nearly two-thirds of clients say they believe law firms have successfully differentiated themselves from competitors.

These findings revealed nearly two-thirds of clients say they believe law firms have successfully differentiated themselves from competitors. That's actually impressive — it means clients don't see law firms as just commodity providers. However, when you dig into what drives that differentiation compared to what makes firms favorable to work with, you discover something unexpected — many firms are winning on completely different metrics than those upon which they're competing.

The relationship paradox

Responsiveness and historical relationships — the comfort food of law firm marketing — account for a hefty 23% of what makes firms favorable to clients, research shows. Indeed, it's the foundation for those 8% to 10% annual rate increases with existing clients who grumble but pay.

However, those same relationship factors that keep firms favorable with their clients contribute only 9% to actual differentiation from competitors.

That means a firm's existing relationships are its rate-increase insurance policy. These relationships insulate the firm from pricing pressure, allowing for those aggressive standard rate bumps. When a firm's lawyers pitch new business, that warm relationship story means nothing — a firm can't differentiate itself based on a relationship that doesn't exist yet.

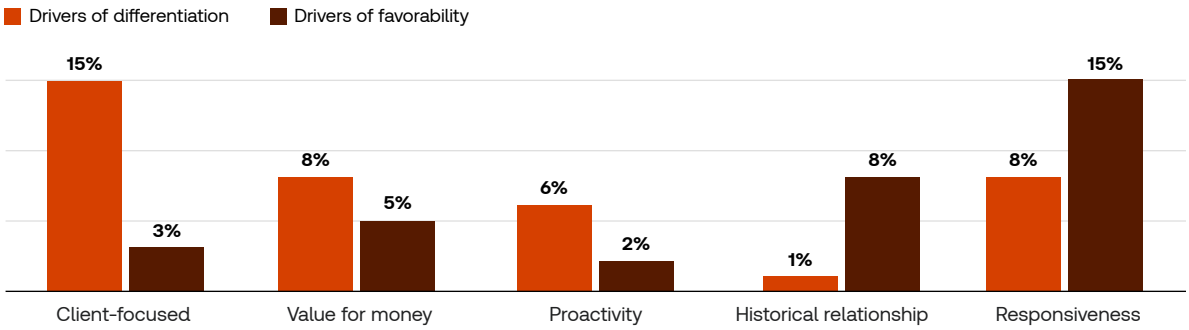
In this case, the competitive landscape looks completely different. Client-focused service dominates *differentiation* while barely registering in *favorability*. Add to this the fact that factors such as proactivity and value for money contribute 14% to differentiation but only 7% to favorability.

© 2025 Thomson Reuters

FIGURE 11:

Trusted vs. chosen

What drives favorability vs. what drives differentiation?



Source: Thomson Reuters 2025

That means those firms successfully commanding premium rates with new clients are the ones that have figured out how to demonstrate that they can address client needs differently. In fact, these firms may not even be competing on rates — they're shifting the entire conversation. They're showing up with solutions before problems fully form and making *value* about something other than the hourly rate.

This paradigm reveals why so many law firms still struggle with the tradeoff between growing their business and growing the rates. These firms are optimizing their engines for *existing client retention* by focusing on relationships and responsiveness; meanwhile, the market is rewarding those firms that gain *new client acquisition* through entirely different attributes, such as focusing on clients, being proactive, and demonstrating value.

To crack this code — growing both rates and market share — firm leaders have to run two games simultaneously: leveraging relationships for rate increases with existing clients while competing on capability, value, and a client-focused approach for new ones.

© 2025 Thomson Reuters

Planning for an uncertain future

Even the best differentiation strategy, however, may mean nothing if the economic foundation it's built on falls away — and today, that foundation is showing some worrying stress fractures.

Of course, we've been here before. The global financial crisis that began in 2007 didn't just wobble the legal industry, it fundamentally rewrote the rules, ushering in, among other factors, an age of significantly more advanced general counsels that have changed the way the legal industry interacts with clients on a fundamental level.

Further, the legal market itself can be seen shifting significantly on a quarter-to-quarter basis. The first quarter of 2025 looked great, as demand came in strong and collection realization improved despite firms asking for record rate increases. Then firms saw a moderate decline in realization, a movement counter to what firms usually see at that time of year and a potential red flag. Suddenly everyone's recalculating their scenarios.

In a recession, the optimal engine setting isn't about maximizing thrust, it's about whatever keeps the engine (and the firm) running.

Clearly, the only certainty at this point is uncertainty. Scenarios for the general economy and the legal market in particular range from an optimistic case of stability to a moderate recession to a severe one that will test those finely tuned engines and client relationships that law firms have been building.

The realization strategies outlined in this report — high-bypass, high-compression, or afterburner — might need complete reconfiguration in real time. Indeed, firms may need to jump entirely from one to the other. In a recession, the optimal engine setting isn't about maximizing thrust, it's about whatever keeps the engine (and the firm) running.

It's also critical to remember that the same technology that's enabling firms to justify historic rate increases also is demanding historic investment levels. GenAI and other advanced technologies are table stakes for proving a firm can deliver more value than the firm down the street. However, those massive tech investments will need to generate returns that justify both the technology spend and the premium rates. It's not enough to have the tools — firms will need to prove their transformation is real.

Readying the engines

Today, the legal industry stands at an inflection point. Firms have discovered unprecedented pricing power, pushing rates to heights that would have seemed unimaginable just five years ago. Yet our data analysis reveals a potentially unwelcome truth: The differentiation that matters most to clients isn't in a firm's realization strategy but in how it demonstrates value.

There's a paradox at play: The strong client relationships that justify higher rates rarely influence new business pitches. Meanwhile, the strategies that attract new clients often go unnoticed by existing ones. Add to this the uncertainty of the economic outlook and the rising costs of GenAI investments, and it's understandable that firm leaders may feel overwhelmed.

The dynamics discussed in this report matter regardless of what's around the corner. Understanding your firm's engine configuration and optimizing it for your own operations make sense in good times or bad. Indeed, that same self-awareness becomes the difference between controlled deceleration and catastrophe if the market turns. Those firms that thrived after the global financial crisis weren't

© 2025 Thomson Reuters

necessarily those with the best rates or highest realization, rather they were the ones that understood their own systems well enough to adjust quickly when they needed to. As is always the case, the smart money isn't on predicting the future — it's on building a system robust enough to handle whatever the future may bring.

Law firm leaders should choose their firm's engine configuration based on its true strengths and invest in the people and technology that justifies the firm's rates. Most importantly, they should accept that in a market forcing everyone toward equilibrium, sustainable advantage doesn't come from squeezing out another percentage point of realization — it comes from clarity about what your firm is, the clients it serves, and how it creates and demonstrate value.

Methodology

Financial data for this report is sourced from *Thomson Reuters Financial Insights* and is based on reported results from 195 US-based law firms. Legal buyer sentiment data comes from *Thomson Reuters Market Insights*, which provides global intelligence based on annual interviews with approximately 2,500 legal buyers from organizations with revenues exceeding US $50 million. In addition, *Market Insights* conducted interviews with 2,246 Stand-out Lawyers as part of the *Stand-out Lawyers* survey in March 2025. This report was produced in collaboration with the True Value Partnering Institute.

© 2025 Thomson Reuters

Thomson Reuters

Thomson Reuters is a leading provider of business information services. Our products include highly specialized information-enabled software and tools for legal, tax, accounting and compliance professionals combined with the world's most global news service – Reuters.

For more information on Thomson Reuters, visit **tr.com** and for the latest world news, **reuters.com**.

Thomson Reuters Institute

The Thomson Reuters Institute brings together people from across the legal, corporate, tax & accounting and government communities to ignite conversation and debate, make sense of the latest events and trends and provide essential guidance on the opportunities and challenges facing their world today. As the dedicated thought leadership arm of Thomson Reuters, our content spans blog commentaries, industry-leading data sets, informed analyses, interviews with industry leaders, videos, podcasts, and world-class events that deliver keen insight into a dynamic business landscape.

Visit **thomsonreuters.com/institute** for more details.

TVPi

True Value Partnering Institute

The True Value Partnering Institute is dedicated to the learning, networking and professional advancement of law firm pricing and revenue assurance professionals who collectively take the lead in driving value. Members earn industry recognized Accreditations and are placed into Cohorts which "meet" virtually each month and are eligible to participate in cross-cohort groups that collectively explore specialty topics of interest. Members are also invited to the member-only Annual Meeting hosted every Spring in Miami.

Learn more at: **https://tvp-institute.com**.

Thomson Reuters Institute

© 2025 Thomson Reuters 10-25

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

BRYAN P. SPENCE, individually and as a representative of a class of similarly situated persons, and on behalf of the AMERICAN AIRLINES, INC. 401(K) PLAN and the AMERICAN AIRLINES, INC. 401(K) PLAN FOR PILOTS,	§	
Plaintiffs,	§	Case No. 4:23-cv-00552-O
v.	§	
AMERICAN AIRLINES, INC., and the AMERICAN AIRLINES EMPLOYEE BENEFITS COMMITTEE,	§	
Defendants.	§	

DECLARATION OF REX A. SHARP IN SUPPORT OF PLAINTIFF'S MOTION FOR ATTORNEYS' FEES, COSTS, AND SERVICE AWARD

I, Rex A. Sharp, of lawful age, upon personal knowledge, and pursuant to 28 U.S.C. § 1746, declare as follows:

1. I served as Class Counsel in the above-captioned matter and have done so throughout this litigation. I offer this declaration in support of Plaintiff's motion for attorneys' fees and service award under 29 U.S.C. § 1132(g)(1).

2. I graduated from the University of Michigan Law School in 1985, and started practicing at Fulbright & Jaworski in Houston. I am a lawyer licensed to practice in the States of Texas, Colorado, Kansas, Missouri, and Oklahoma; federal district courts for the Eastern, Northern, Southern, and Western Districts of Texas; the Northern District of California, the District of Colorado, the District of Idaho, the Southern District of Iowa, the District of Kansas, the Western District of Missouri, the Southern and Northern Districts of Ohio, and the Eastern, Northern, and Western Districts of Oklahoma; the Fifth, Sixth, Seventh, Eighth, and Tenth Circuit Court of Appeals; and the United States Supreme Court. I have argued before all of those district courts, Circuits, and the U.S. Supreme Court. My resume is attached and incorporated by reference. *See* Ex. A, Resume of Rex A. Sharp.

3. I am managing partner of Sharp Law, LLP, a law firm in Prairie Village, Kansas. My firm regularly handles complex litigation, including class action lawsuits, in state and federal courts across the country. We regularly serve as trial and appellate counsel, taking cases from investigation, trial or settlement, and appeal, if necessary.

4. Sharp Law has extensive experience in class actions and other complex litigation. I or other attorneys at Sharp Law have held leadership positions in courts across the country, including: *In re EpiPen Marketing, Sales Practices and Antitrust Litig.*, 17-MDL-2785 (D. Kan.) (Rex Sharp appointed co-lead counsel in national RICO class and multi-state antitrust class certified in multi-district litigation proceeding; two settlements totaling $609 million); *Sagacity, Inc. v. Cimarex Energy Co.*, No. CIV-17-101-GJL (E.D. Okla.) (Rex Sharp and Sharp Law appointed as class counsel for oil and gas royalty underpayment settlement class of $20.5 million approved and finalized across two federal district court cases and one state court case); *Cook Children's Health Foundation v. Diamondback E&P, LLC*, No. CIV-21-359 (W.D. Okla.) (Rex Sharp and Sharp Law appointed as class counsel for $12 million settlement for alleged breach of off-lease use of gas royalty clause for royalty owners in Texas wells); *Kunneman Properties, LLC v. Marathon Oil Company*, No. 22-CV-274-KEW (E.D. Okla.) (Rex Sharp appointed as class counsel for $35 million class settlement for alleged underpayment of gas royalties); *In re SoClean, Inc. Marketing, Sales Practices, and Products Liability Litig.*, No. 22-mc-152 (W.D. Pa.) (Sharp Law attorney appointed co-lead counsel for case with nationwide allegations of breaches of express and implied warranties, fraudulent misrepresentation, fraud by omission, negligent misrepresentation, and state consumer protection laws); *Cecil v. BP America Production Company*, No. 6:16-cv-00410-KEW (E.D. Okla.) (Rex Sharp appointed as co-class counsel $147 million class settlement for alleged underpayment of gas royalties); *Fitzgerald Farms, Inc. v. Chesapeake Operating Co.*, No. CJ-10-38

(Okla. Dist. Ct. Beaver Cnty. 2015) (Rex Sharp appointed as co-class counsel $119 million class settlement for alleged underpayment of gas royalties); *In re Universal Service Fund Telephone Billing Practices Litigation*, MDL No. 1468 (D. Kan.) (Sharp Law attorney served as liaison counsel and trial team member; tried to a plaintiffs' verdict); *In re Crop Inputs Antitrust Litigation*, 21-MD-2993 (E.D. Mo.) (Sharp Law attorneys appointed to executive committee for case with allegations of nationwide conspiracy amongst agricultural input supplies to boycott online retailers, including allegations of price fixing and RICO violations); *RFLI Inc. v. Williams Cos.*, No. 2:05-cv-01331-RCJ-PAL (D. Nev.) (Sharp Law attorney appoint co-lead to represent Reorganized Farmland Industries, Inc. in a lawsuit against natural gas producers for market manipulation (antitrust violations) where RFLI purchased natural gas for use in manufacturing fertilizer). In addition to those prior recoveries, we are actively litigating numerous other class actions. More information may be found on the firm website, https://sharplawllp.com/.

5. I have personally tried over 15 jury trials and a dozen or more court trials in state and federal courts, including class actions. I have been lead or co-lead class counsel in over 100 class cases.

6. The other Sharp Law attorneys who worked on this case are:

a. Partner Isaac (Ike) Diel who graduated from Emporia State University (B.S., 1986) and was a member of the varsity football team achieving Academic All American honors during the 1985 season. He subsequently graduated from the University of Oklahoma School of Law (J.D.,

with distinction, 1989). While in law school, Mr. Diel was the Assistant Managing Editor for the American Indian Law Review. He was admitted to practice in the state and federal courts of Missouri in 1989, the state and federal courts of Kansas in 1990, and the Tenth Circuit Court of Appeals in 2005. Mr. Diel has been engaged in complex litigation, mostly plaintiffs class actions, for over 25 years. He was honored in 2022 by the American Antitrust Institute with the Outstanding Litigation Achievement Award for his work in the EpiPen Marketing and Sales Practices and Antitrust Litigation MDL. More information can be found at https://sharplawllp.com/attorneys/ike-diel/.

b. Partner Ryan Hudson graduated from the University of Kansas (B.A. 2001, with honors and highest distinction), and University of Kansas Law School in 2005, Order of the Coif, Member of the Kansas Law Review, and Moot Court Co-Champion. He then clerked for the Honorable John W. Lungstrum, then-Chief Judge of the United States District Court for the District of Kansas (2005-06), before settling into private practice in Texas where he was recognized as a "Rising Star" in Litigation by the Texas Monthly. He is licensed to practice in many courts, including the U.S. District Court for the Northern District of Texas. He is widely published and has taught as an adjunct professor and lecturer at law schools many times. He has been recognized by his peers as a Super Lawyer in Missouri and Kansas, as well as Best Lawyers in America—Plaintiffs Class Actions. He recently clerked for the Honorable Richard E.N. Federico, U.S. Court of Appeals for the Tenth Circuit (2024-25).

More of his accomplishments can be found at https://sharplawllp.com/attorneys/ryan-hudson/.

c. Senior Associate Nathan Kakazu joined Sharp Law as an associate in 2023. Previously, he clerked for the Honorable Daniel D. Crabtree in the United States District Court for the District of Kansas. He then joined a mid-size law firm litigating primarily ERISA disputes in federal courts nationwide. Nathan Kakazu graduated from KU Law in 2017. He was runner-up in the in-house moot court competition and served as Publication Editor for the Kansas Journal of Law and Public Policy. He received his undergraduate degree from Grinnell College and served as a captain for the cross country and track teams in his senior year. He has also been designated a Super Lawyer Rising Star for Missouri and Kansas. More information can be found at https://sharplawllp.com/attorneys/nathan-kakazu/.

d. Senior Associate Hammons is a trial and appellate attorney, where he focuses on class action and complex litigation cases, including agriculture, antitrust, consumer protection, ERISA, pharmaceutical, and oil-and-gas disputes. After receiving his J.D. from the University of Oklahoma College of Law in 2021, Hammons joined Sharp Law. During law school, his article examining the definition of "waters of the United States" under the Clean Water Act and its impact on agriculture was published in January 2021 in the Oklahoma Law Review. Hammons also served as the Executive Articles Editor of the Oklahoma Law Review. Before attending law school, Hammons

received degrees in agricultural economics and finance from Oklahoma State University. He is licensed in Kansas, Missouri, Oklahoma, Texas, and several federal courts, including the Fifth and Tenth Circuit Courts of Appeal. Among his professional involvements, he serves as Membership Chair for the Kansas & Western District of Missouri chapter of the Federal Bar Association and participates in the American Bar Association, the American Agricultural Law Association, and the Foundation for Natural Resources and Energy Law. Since 2021, Hammons has also co-authored the Kansas Chapter of the American Bar Association's The Law of Class Action: Fifty-State Survey. More information can be found at https://sharplawllp.com/attorneys/hammons-p-hepner/.

7. Plaintiff Bryan Spence retained Hacker Stephens LLP and Sharp Law to bring this lawsuit on behalf of him and the rest of the participants in American Airlines' employee 401K plan. Mr. Spence could not afford to retain the firm hourly, and class actions simply are not funded that way. Class actions are financed by the attorneys advancing expenses and investing the time and labor on a contingent fee in hopes of recovering something of value for the class—damages, injunctive relief, or both.

8. Before doing so, however, I reacquainted myself with ERISA law which was not billed in time to the case. Because the case was doubly novel involving proxy voting rights and ESG, I expected that substantial manpower would need to be devoted and would likely involve expensive economic experts. I sought out other ERISA or general class action firms to share the risk and load. I struck out. Most

declined because ESG was a hot-button political issue and the firms supported ESG politically. In addition, since breach of fiduciary duty had never been brought for proxy voting before, no other firm would join.

9. At the behest of Plaintiff Bryan Spence, Hacker Stephens and Sharp Law agreed to take the case on a contingent fee basis and advance any necessary expenses for the case. We found an expert who was preeminent in the econometric field that we needed, and hired the late J.B. Heaton.

10. The case proved to be both expensive, time-consuming, and interesting. Total expenses were $655,910.02 at Sharp Law to date. Should the Court wish a breakdown of those expenses, that can be provided.

11. I have reviewed Sharp Law's time records in this case. Sharp Law worked 3,404.90 hours all of which was reasonably expended by Class Counsel. Below at ¶ 14 is a table summarizing Sharp Law LLP's time and lodestar based on our customary and current rates with billing judgment exercised. The total number of hours spent by my firm litigating the case from investigation was 3,783.20, but that amount was reduced by the exercise of billing judgment.

12. The table below at ¶ 14 was prepared from contemporaneous daily time records prepared and maintained by my firm.[1] In connection with representing Plaintiff and the Class in this case, my firm did the following: investigation of

[1] Having been an associate at Fulbright & Jaworski in Houston and later a partner at Husch Eppenberger in Kansas City, I can attest that defense attorneys are far more adept at capturing all the time they spend on a case than plaintiffs' attorneys, such that a plaintiff's attorneys hours are usually understated by comparison.

Plaintiff Spence's claims and the underlying factual record; development of legal theories of the case; drafting, reviewing, and filing of pleadings, motions, and briefs, including defeating Defendants' Motion to Dismiss, Defendants' Motion for Summary Judgment and *Daubert* motion; briefing a successful Motion for Class Certification, and several offensive and defensive Motions to Compel; coordinating case strategy and discovery with Plaintiff's co-counsel; prepare for, taking, and defending many depositions in the case, including Plaintiffs' expert deposition; coordinating expert disclosure and reports with co-counsel; preparing for and presenting to Your Honor for a bench trial; and multiple post-trial briefings. The detailed time records are available for Court review upon request. The lodestar amount reflected in the table below is for work performed by attorneys and professional staff at my firm for the benefit of the Class. The hourly rates for the attorneys and professional staff reflected in the table below are the usual and customary hourly rates currently charged by my firm in similar complex litigation matters. Such rates are consistent with the rates charged by the national market for ERISA and class action attorneys. *See* Appx. 085 (Declaration of Warren Tavares Burns of Burns Charest LLP) at ¶ 9.

13. I have reviewed the hours submitted by the Sharp Law LLP attorneys on this case and exercised billing judgment to remove hours I deemed excessive, redundant, or otherwise unnecessary. The work performed and the amount sought was reasonable and justified in light of the nature of the case, the complexity of the issues, and the expertise required. Unlike defense firms, plaintiffs' contingent firms thrive on efficiency. In addition, when tasks were better suited for associates or

paralegals, Hacker Stephens enlisted the associates or paralegals at Sharp Law, rather than do the work themselves at higher rates. Thus, in exercising billing judgment, 378 hours have been cut from the billed time of Sharp Law (which is approximately 10% of hours billed to this case).

14. The following table summarizes the hours and lodestar performed by attorneys and paralegals after the exercising of billing judgment:

Attorney	Class	Hours	Rate	Lodestar
Rex A. Sharp (MP)	1985	979.10	$ 1,375.00	$ 1,346,262.50
Isaac L. Diel (P)	1989	800.90	$ 1,330.00	$ 1,065,197.00
Ryan C. Hudson (P)	2005	54.60	$ 1,210.00	$ 66,066.00
Nathan A. Kakazu (A)	2017	369.70	$ 850.00	$ 314,245.00
Hammons P. Hepner (A)	2021	891.20	$ 750.00	$ 668,400.00
Roberta Ranes (PL)		150.00	$ 200.00	$ 30,000.00
Summer Tetuan (PL)		159.40	$ 200.00	$ 31,880.00
TOTALS		**3,404.90**		**$ 3,522,050.50**

15. In light of Sharp Law's skill and experience, the "landmark" nature of this litigation, the success of the case for the Class, and the fact that it was litigated by small firms against the most formidable opponents, the proposed attorneys' fees are reasonable.

* * *

I declare under penalty of perjury that the foregoing is true and correct.

Dated: November 3, 2025.

/s/ Rex A. Sharp
Rex A. Sharp

EXHIBIT A

REX ARTHUR SHARP

Employment in Legal Profession:

Managing Partner – Sharp Law, LLP (January 1, 2020-present)
Sole Stockholder – Rex A. Sharp, P.A. (April 1, 2016 – present)
Co-Manager – Gunderson Sharp, LLP (October 1, 2000 – March 31, 2016)
Sole Stockholder – Sharp Law, LLC (February 4, 2000 – September 30, 2000)
Partner – Husch & Eppenberger, LLC; Kansas City, MO (August, 1997 – January 20, 2000); Risk Management (October 1998 – January 20, 2000)
Stockholder – Sharp, McQueen, McKinley, Dreiling, Morain & Tate, P.A.; Liberal, KS (October 1989 – July 1997)
Associate – Neubauer, Sharp, McQueen, Dreiling & Morain, P.A.; Liberal, KS (May 1987 – September 1989)
Associate – Fulbright & Jaworski; Houston, TX (June 1985 – May 1987)
Law Clerk – Thompson & Knight; Dallas, TX (Summer 1984)
Watt, Tieder, Killian & Hoffar; Washington, D.C. (Summer 1984)
Neubauer, Sharp, McQueen, Dreiling & Morain, P.A. (Summer 1983)

Legal Publications and Presentations:

Sharp, Hudson, and Levit, MDL Cartography: Mapping the Five Stages of a Federal MDL, 89 UMKC L. Rev. 801-816 (2021)
Sharp, Paying for the Crimes of Others? Landowner Liability for Crimes on the Premises, 29 So. Tex L. Rev. 11-81 (1987)
Kansas Tort Claims Act – Southwest Kansas Bar Association Annual Meeting (1994); Southwest Kansas Bar Association Garden City CLE (1997)
Kansas Corporate Commission, Testimony on Gas Gathering Regulation (1995)
Kansas Legislative Task Force on Gas Gathering, Testimony (1996)
Municipal Risk Management, Liberal, KS (1995)
Third Annual Ethics Symposium, The Earl E. O'Connor American Inn of Court, May 16, 2002, The Ethics of Witness Preparation
Professional Responsibility Update, UMKC, June 27, 2001
SWKBA Annual Meeting, September 10, 2004, "The Big Case"
Kansas Special Committee on the Judiciary, Testimony on Senate Bill 53 (*Daubert* rule), November 3, 2005
ABA Survey of Class Action Law, Kansas 2007- 2015
Various presentations at Inn of Court and at SWKBA
Canada Presentation: Recent Developments in U.S. Class Action Litigation March 2018
Tenth Circuit Bench Bar Conference Ethics CLE Presenter August 2018

Honors, Awards and Recognition:

Board Certification for Civil Trial Law, National Board of Trial Advocacy (1997-present)
Million Dollar Advocates Forum (1996)
Kansas Board of Discipline of Attorneys (1996 – 2016)

City Attorney for the City of Liberal (1993-1997)
Assistant City for the City of Liberal (1988-1992)
Who's Who in American Law (1992 – present)
Who's Who in the Midwest (1997 – present)
SWKBA Distinguished Service Award (2009)
Super Lawyers Missouri & Kansas (2008-present)
Reappointment Committee Magistrate Judge O'Hara (2007)
Kansas Judicial Branch Videoconferencing Committee (2012-13)
Best Lawyers (2013- present); Lawyer of the Year 2023
Litigation Counsel of America, Fellow (2016-present)
American Antitrust Institute Outstanding Antitrust Litigation Achievement in Private Law Practice 2022 (*In re EpiPen Marketing, Sales Practices, and Antitrust Litigation)*

Bar Associations:

Kansas Bar Association – Young Lawyer Regional Representative (1989-1991)
Kansas Bar Foundation – Fellow Silver
Southwest Kansas Bar Association
Reorganizer and Director (September 1992-1997)
President Elect (September 1995 -1997)
President (September 1996-1997)
Kansas City Metropolitan Bar Association (1998 – present)
Kansas Inn of Court, Master and Barrister (1999-present)
Kansas Bar Association # 12350
State Bar of Texas #18118800
Oklahoma Bar Association #011990
Colorado Bar Association #017389
The Missouri Bar #51205
Seward Haskell County Bar
Johnson County Bar Association
American Trial Lawyers Association (1995-present) #0110280
American Bar Association (1986-present)
Kansas Trial Lawyers Association (2000-present)
KTLA testimony to Kansas Senate Judiciary Comm. Feb 2023

University of Michigan Law School (August 1982 – May 1985)

J.D. *cum laude*
Journal of Law Reform, Associate Note Editor
Campbell Moot Court Competition
Quarterfinalist (2nd year)
Finalist, Second Place (3rd year)
S. Anthony Benton Best Brief Awards (2) (3rd year)
Law School Student Senate
Writing and Advocacy
Certificate of Merit (1st year)
Course Instructor (2nd year)

Board of Governors
Note, The Admissibility of Prior Silence to Impeach the Testimony of Criminal Defendants, 18 U. Mich. J.L.R.741-66 (1985)

Stanford
(January 1980 – June 1982):
A.B., Economics with Honors and Distinction
Honors Thesis: The Gold Standard: A Practical Application in the 1980's
Student Senate
Student/Faculty Committee on Academic Achievement and Appraisal

University of Oklahoma
(August 1978 – December 1979):
Honors Program
Academic Achievement Award
Dean's Honor Roll
Phi Eta Sigma, Freshman Honorary Fraternity
Student Senate Committee – Chairman for Adoption of Legal Services Association
Sigma Nu Fraternity – Scholastic and Social Chairman

Court Admissions:
State Courts:
Kansas – November 22, 1985, Bar No. 12350
Texas – November 8, 1985, Bar No. 18118800
Oklahoma – October 15, 1986, Bar No. 11990
Colorado – May 23, 1988, Bar No. 017389
Missouri – December 19, 2000, Bar No. 51205
U.S. District Courts:
Kansas (1985)
Texas, Southern District (1986)
Oklahoma, Western District (1987)
Oklahoma, Northern District (1998)
Texas, Northern District (1987)
Missouri, Western District (1998)
Nebraska (2003)
Texas, Western District (2021)
U.S. Court of Appeals:
Tenth Circuit (1988)—numerous arguments since then
Eighth Circuit (2006)
Fifth Circuit (2004)
Seventh Circuit (2009)
Third Circuit (2016)
Sixth Circuit (2021)
U.S. Supreme Court (1986), briefed and argued *Dart Cherokee Basin Op. Co. v. Owens*, 135 S.Ct. 547 (argued Oct. 7, 2014, decided 5-4 on Dec. 15, 2014)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

BRYAN P. SPENCE, individually and as a representative of a class of similarly situated persons, and on behalf of the AMERICAN AIRLINES, INC. 401(K) PLAN and the AMERICAN AIRLINES, INC. 401(K) PLAN FOR PILOTS,	§	
Plaintiffs,	§	Case No. 4:23-cv-00552-O
v.	§	
AMERICAN AIRLINES, INC., and the AMERICAN AIRLINES EMPLOYEE BENEFITS COMMITTEE,	§	
Defendants.	§	

DECLARATION OF RANDALL W. MILLER IN SUPPORT OF PLAINTIFF'S MOTION FOR ATTORNEYS' FEES, COSTS, AND SERVICE AWARD

1. My name is Randall W. Miller. I am over the age of 18 and have personal knowledge of the contents of this declaration.

2. I am a 2014 graduate of Washington and Lee University School of Law.

3. I am a partner in the Dallas office of the law firm of Munsch Hardt Kopf & Harr, P.C. (Munsch Hardt).

4. Before I joined Munsch Hardt, I was a partner in the Dallas office of Kirkland & Ellis LLP. At Kirkland & Ellis I served as appellate counsel and class action defense counsel for clients facing complex and high-exposure lawsuits.

5. Before my time at Kirkland & Ellis, I served as an Assistant Attorney General of Texas. As an Assistant Attorney General, I defended state officials, universities and governmental entities in state and federal court, and served on a team of multistate lawyers that sued the federal government over disputes related to taxes and health care.

6. I have also served as a law clerk to Judge Lawrence VanDyke on the U.S. Court of Appeals for the Ninth Circuit, and Judge Matthew Kacsmaryk on the U.S. District Court for the Northern District of Texas.

7. I have broad experience as a litigator in Dallas and am familiar with the billing rates charged by lawyers who litigate federal class actions in the Northern District of Texas. I also worked with Heather Hacker and Andrew Stephens at the Texas Attorney General's Office and am familiar with their work at Hacker Stephens LLP. I know that they are skilled and respected lawyers with a good reputation in the Northern District of Texas.

8. I am aware that Sharp Law LLP litigates large class action lawsuits nationwide.

9. I have reviewed the billing rates sought by Hacker Stephens LLP and Sharp Law LLP in the above-captioned lawsuit. Based on my experience litigating in the Dallas-Fort Worth area, it is my opinion that the rates Hacker Stephens LLP and Sharp Law LLP propose for their attorneys are reasonable.

10. I understand that the rates Hacker Stephens LLP and Sharp Law LLP are proposing are as follows:

Attorney	Class	Rate
Heather G. Hacker	2005	$1,250.00
Andrew B. Stephens	2007	$1,250.00
Rex A. Sharp	1985	$1,375.00
Isaac L. Diel	1989	$1,330.00
Ryan C. Hudson	2005	$1,210.00
Nathan A. Kakuzu	2017	$850.00
Hammons P. Hepner	2021	$750.00

11. In light of the expertise that these lawyers brought to this case, the prevailing market rates for complex litigation in the Northern District of Texas, the nature and complexity of this litigation, and the success obtained for the class in this case, it is my opinion that these rates are reasonable.

12. Given their experience and skill, Hacker Stephens LLP and Sharp Law LLP lawyers would be able to charge similar or higher rates as attorneys litigating at large international law firms. That is especially true given the complexity of ERISA class action lawsuits.

13. I am also aware of litigators of comparable experience in the Dallas-Fort Worth area who charge significantly higher rates. For example, when I was a partner at Kirkland & Ellis in 2023, my hourly rate was approximately $1,400 per hour. The proposed rates for Hacker Stephens LLP and Sharp Law LLP are lower than the rates my prior firm charged their clients two years ago for attorneys of comparable experience and expertise on similar matters.

14. I am also aware of comparable litigators that charge significantly higher rates, including between $1,085-1,895/hour for law firm partners and between $625-$1,195/hour for associates as of 2021. *See* Decl. of Erin E. Murphy in Supp. of Debtors' App. For Retention and Employment of Kirkland & Ellis LLP, *In re: Nat'l Rifle Assoc. of Am. and Sea Girt LLC*, No. 21-30085, ECF No. 173-2 at 4 (N.D. Tex. Feb. 17, 2021).

15. In a 2022 bankruptcy case, the Department of Justice noted the prevailing rates at numerous large international law firms, including Hogan Lovells US LLP ("Hogan Lovells"); Jones Day; Skadden Arps Slate Meager & Flom LLP ("Skadden"); Weil, Gotshal & Manges LLP ("Weil"); King & Spaulding, LLP; Shook Hardy & Bacon, LLP; and Orrick, Harrington & Sutcliffe, LLP ("Orrick"). *See* Objection of the U.S. Trustee to Debtor's Application for Retention of Hogan Lovells

as Special Counsel, *In re: LTL Management, LLC*, No. 21-30589, ECF No. 2324 ¶ 22 (D.N.J. May 20, 2022).

16. At Hogan Lovells, the discounted hourly rate for partners was between $950 and $2,465/hour, the discounted hourly rate for counsel was between $910 and $1,735/hour, and the discounted rate for associates was between $605 and $1,055/hour. *Id.* ¶ 21.

17. Though the Department of Justice objected to the Hogan Lovells rates, it did not object to the rates of other large international law firms that charged rates higher than Hacker Stephens LLP and Sharp Law LLP propose for this case. Jones Day billed at a rate up to $1,350/hour, Skadden's hourly range for partners was $900 to $1,875/hour, Weil's hourly range for partners was $1,150 to $1,795/hour, and Orrick's hourly range for counsel and partners was $805 to $1,750/hour. *Id.* ¶ 23.

18. In 2022, a partner in the Houston office of Gibson Dunn also explained that his hourly rate was $1,385/hour and that associates in Gibson Dunn's Houston office charge between $800 and $1,000/hour. Decl. of Collin Cox, *Ross Dress for Less, Inc. v. ML Development LP*, No. 20-cv-978, ECF No. 80-1 ¶ 5 (S.D. Tex. May 6, 2022).

19. I am also aware that opposing counsel in this case was O'Melveny & Myers LLP, which has one of the top ERISA defense groups in the country according to Chambers and Partners. *See* Chambers and Partners, *ERISA Litigation | USA*, "Departments," https://chambers.com/legal-rankings/erisa-litigation-usa-nationwide-5:635:12788:1?l=en-GB. Like Kirkland, Hogan Lovells, Skadden, Weil, Orrick, and Gibson Dunn, O'Melveny is also an AmLaw 100 law firm.

20. In conclusion, based on my knowledge and experience litigating cases in the Northern District of Texas, my familiarity with the hourly rates charged by firms in this legal market, the qualifications of the lawyers involved in this litigation, the nature and complexity of this litigation, and the success obtained for the class, it is my opinion that Hacker Stephens LLP's and Sharp Law LLP's rates are reasonable.

I declare under penalty of perjury under the laws of the United States of America and of this Court that the foregoing is true and correct to the best of my knowledge.

Dated: October 27, 2025.

/s/ *Randall W. Miller*
Randall W. Miller

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

BRYAN P. SPENCE, individually and as a representative of a class of similarly situated persons, and on behalf of the AMERICAN AIRLINES, INC. 401(K) PLAN and the AMERICAN AIRLINES, INC. 401(K) PLAN FOR PILOTS,	§	
Plaintiffs,	§	Case No. 4:23-cv-00552-O
v.	§	
AMERICAN AIRLINES, INC., and the AMERICAN AIRLINES EMPLOYEE BENEFITS COMMITTEE,	§	
Defendants.	§	

DECLARATION OF WARREN TAVARES BURNS OF BURNS CHAREST LLP IN SUPPORT OF PLAINTIFF'S MOTION FOR ATTORNEYS' FEES, COSTS AND SERVICE AWARD

I, Warren Tavares Burns, of lawful age, upon personal knowledge, and pursuant to 28 U.S.C. § 1746, declare as follows:

1. I offer this declaration in support of Plaintiff's petition for attorneys' fees and expenses under 29 U.S.C. § 1132(g)(1).

2. I am a Founding Partner at the law firm Buns Charest LLP. I focus my practice on high-stakes litigation affecting the lives and interests of thousands of individuals and businesses. I have tried and litigated numerous cases involving price fixing, monopolization, bad drugs, toxic exposure, breach of contract, intellectual property, business torts, consumer protection statutes, and accounting malpractice. I graduated from Tulane University Law School, summa cum laude, and was Editor in Chief of the Tulane Law Review and received the John Minor Wisdom Award, which is Tulane's highest prize for graduating law students. I then was Law Clerk for the Hon. Paul J. Kelly, Jr. on the U.S. Court of Appeals for the Tenth Circuit.

3. I worked in and became a partner at the Dallas office of Susman Godfrey LLP before breaking off to form Burns Charest LLP in 2015 headquartered in Dallas. We focus on class and mass actions. We have approximately 9 partners, 26 associates, 3 staff attorneys, and 5 of counsel attorneys.

4. Since 2017, I have represented over 1,000 American hospitals in highly complex litigation against opioid manufacturers, distributors, and retail pharmacies. In multiple cases spanning federal and state courts across the country, I have led teams whose efforts to date have resulted in over $600 million in settlements for the

hospitals. I am currently leading a team in a 2-month trial representing Florida hospitals in their suit against retail pharmacy defendants.

5. In 2023, I negotiated a settlement on behalf of over 900 workers who were exposed to asbestos at an oil refinery on St. Croix in the U.S. Virgin Islands. After taking one of my clients' cases to the brink of trial, the defendant bankrupted its subsidiary and shifted the fight to bankruptcy court. After months of intense litigation where the debtor and its parent company denied any liability, I secured a settlement that provides $105 million for current victims and tens of millions in additional compensation for those who get sick in the future.

6. In 2022, after five years of hard-fought MDL litigation in the U.S. District Court for the District of Kansas on the eve of a trial that I was poised to lead, our team negotiated a settlement with the remaining defendant in a nationwide antitrust and RICO class action against the manufacturer and marketer of the EpiPen. In total, the defendants paid $609 million to a class of people and businesses who had paid inflated prices for the lifesaving device. EpiPen was the first consumer and business case to take on corporations for headline-producing pharmaceutical price increases.

7. In 2020 as the COVID virus raged and shut down courtrooms, I did not stop working for my clients. In a landmark class action settlement, I represented a class of thousands of American businesses who had contracted with Blue Cross / Blue Shield entities to administer their self-funded healthcare plans. Along with attorneys representing fully insured clients, I negotiated a $2.67 billion dollar settlement on

behalf of the combined classes that includes meaningful institutional change. Our settlement has withstood every level of appellate scrutiny and is now being administered.

8. In 2019, I represented a class of thousands of American dentists who sued industry giant 3M Corporation over defective crowns that had been placed in patients' mouths. Saving my clients millions in litigation costs, I was able to negotiate an early settlement with 3M that provided over $30 million to compensate dentists for their expenses in remediating the faulty crowns.

9. Below are rates my firms uses to determine lodestar or a lodestar cross check in similar complex litigation or class action cases. These rates are awarded to Burns Charest and similar firms in complex litigation and class action cases.

Year of Graduation	Hourly Rate
1996 to 2004	$1,300-$1,500
2005 to 2014	$1050-$1,400
2013 to 2019	$800-$900
2020 to 2021	$700-800
2022-2025	$400-$700
Paralegal with 10+ years of experience	$450-$600
Paralegal with 10 years or less of experience	$200-$500

* * *

I declare under penalty of perjury that the foregoing is true and correct.

Dated: October 23, 2025.

Warren Tavares Burns
State Bar No. 24053119

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

BRYAN P. SPENCE, individually and as a representative of a class of similarly situated persons, and on behalf of the AMERICAN AIRLINES, INC. 401(K) PLAN and the AMERICAN AIRLINES, INC. 401(K) PLAN FOR PILOTS,	§	
Plaintiffs,	§	Case No. 4:23-cv-00552-O
v.	§	
AMERICAN AIRLINES, INC., and the AMERICAN AIRLINES EMPLOYEE BENEFITS COMMITTEE,	§	
Defendants.	§	

DECLARATION OF BRYAN SPENCE IN SUPPORT OF PLAINTIFF'S MOTION FOR ATTORNEYS' FEES, COSTS, AND SERVICE AWARD

I, Bryan Spence, of lawful age, upon personal knowledge, and pursuant to 28 U.S.C. § 1747, declare as follows:

1. I am a resident of the State of Texas and Class Representative in the above captioned case.

2. I have actively participated in this case from its inception. On June 2, 2023, I filed a lawsuit in the Northern District of Texas against American Airlines and I am a named Plaintiff in the class action complaint. At all times during this litigation, I have been an employee of American Airlines.

3. I would not have been able to pay Class Counsel hourly to bring this case, so a contingent fee arrangement with costs advanced by the lawyers was the only way I could have retained competent counsel to handle the case.

4. Since the lawsuit was filed, I have been fully informed of case developments and procedural matters over the course of the litigation, including regular correspondence with my lawyers at Hacker Stephens LLP and Sharp Law LLP concerning discovery, class certification, summary judgment, and trial.

5. Specifically, as part of my role as named plaintiff and Class Representative in this case, and in addition to the above, I provided documents, aided in the creation of pleadings, and gathered and provided information for Plaintiffs' discovery responses, which were served on Defendant on October 13 and November 20, 2023. I also spent significant time preparing for the November 14, 2023 meet-and-confer, preparing for and sitting for a seven-hour deposition on December 7, 2023, and preparing for the four-day trial, both for my testimony and for what my lawyers would present in court.

6. I estimate I have invested more than 100 hours participating in and helping to oversee this litigation on behalf of the Class. I traveled from my home in Aledo, TX to Newport Beach, CA on December 14, 2023 to attend mediation in this case. I attended a settlement conference with my lawyers and opposing counsel in Fort Worth, TX on June 5, 2024. I attended all four days of trial, held on June 24 through June 27, 2024 in Fort Worth, TX. I took notes during trial and participated in meetings with my lawyers to share what I observed.

7. These hours came at a personal cost to me and my family, as my wife and I have very young children. I understood when I filed this case that I may not recover any money for the Class (and therefore myself), and I also understood that filing this case while a current employee at American Airlines could potentially expose me to retaliation by the company. I hoped that would not be the case, as I otherwise enjoy my job and working for American Airlines, and would like to continue working for American until I retire. But I still felt that this case was worth pursuing because I believed it could help vindicate important principles and could protect me and other Class Members from American's breach of fiduciary duty in managing our retirement funds.

8. During the pendency of the lawsuit, I personally observed attacks and criticism of me by various individuals on the Internet and social media.

9. Based on my active participation in the case, including my time responding to discovery, sitting for a deposition, and attending trial, and factoring my hourly rate for flight time as an American Airlines pilot, the value of the time I invested as Class Representative is valued at approximately $36,000.00.

10. The service award requested is compensation for my time spent assisting the litigation, answering questions and providing documents and discovery responses, attending mediation and a settlement conference, preparing for and giving a deposition, preparing for and giving trial testimony, and assuming the risk involved in bringing this class action.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: November 4, 2025.

/s/ Bryan Spence
Bryan Spence