IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ROBERT HURWITZ	:	**CIVIL ACTION**
	:	
v.	:	
	:	**NO. 15-711**
LRR ENERGY L.P., *et al*	:	

ORDER

AND NOW, this 2nd day of January 2018, upon considering Plaintiff's Motion for Class Certification (ECF Doc. No. 78), Defendants' Opposition (ECF Doc. No. 102), Plaintiff's Reply (ECF Doc. No. 107), following oral argument and for good cause shown, it is **ORDERED** Plaintiff's Motion (ECF Doc. No. 78) is **GRANTED** as to claims in the Amended Complaint (ECF Doc. No. 15) presently sustained after Judge Robinson's March 13, 2017 Order (ECF Doc. No. 38) and our December 29, 2017 Order (ECF Doc. No. 119) challenging material omissions and misrepresentations in the September 3, 2015 Proxy and Registration Statement concerning the possibility of future defaults in Vanguard Natural Resources, LLC's debt ratios in its credit facilities and in its "Reasons for the Merger" regarding its ability to pay distributions post-acquisition based on potential credit facility defaults upon our findings:

1. We preliminarily certify this action to proceed on Mr. Hurwitz's claims as a class action on behalf of all persons or entities:

   (a) **Holding LRR Energy, L.P. ("LRR") common units as of August 28, 2015 through the October 5, 2015 close of Vanguard Natural Resources, LLC's ("Vanguard") acquisition of LRR, were damaged and assert claims presently sustained in the March 13, 2017 and December 29, 2017 Orders under sections 14(a) and 20(a) of the Securities Exchange Act of 1934; and,**

   (b) **Receiving Vanguard common units in exchange for their LRR common units on or about October 5, 2015 under the Registration**

Statement, as amended, were damaged, and assert claims presently sustained in the March 13, 2017 and December 29, 2017 Orders under sections 11 and 15 of the Securities Act of 1933; but

(c) **Excluding: Defendants; members of the immediate family of each individual Defendant; an officer or director of Vanguard or LRR; a firm, trust, corporation, officer or other entity in which a Defendant has or had a controlling interest; persons participating in the alleged material omissions or misrepresentations; and the legal representatives, agents, affiliates, heirs, beneficiaries, successors-in-interest or assigns of an excluded person or entity.**

2. **Class Findings**. Mr. Hurwitz satisfies the prerequisites for a class action under Fed. R. Civ. P. 23(a), (b)(3) and Defendants' challenges to his adequacy and to the predominance of common issues over potential individual damages do not preclude certification at this stage[1]:

a. The large number of class members arising from more than 28 million LRR common units outstanding at the time of Vanguard's acquisition resulting in over 15.4 million Vanguard units distributed to LRR's former unit holders renders joinder of all class members impracticable;

b. Defendants' conduct, including alleged omissions and representations in the September 3, 2015 Registration Statement and Proxy regarding Vanguard's debt ratios and ability to make distributions, as well as the myriad of defenses arising from earlier public disclosures affecting the total mix of information and materiality of omissions, affects all Class members;

c. There are questions of law and fact common to the Class including claims and defenses regarding whether:

i. Defendants omitted and/or misrepresented material facts in the September 3, 2015 Registration Statement and Proxy regarding the possibility of post-acquisition defaults in Vanguard's debt ratios in its credit facilities;

ii. Defendants omitted and/or misrepresented material facts in the September 3, 2015 Registration Statement and Proxy regarding Vanguard's ability to pay cash distributions after the Vanguard transaction;

iii. Class members sustained damages calculated through a uniform methodology which will define a class wide basis for a monetary value in this securities omission and misrepresentation case representing the losses during the Class Period;

iv. Vanguard's earlier publicly filed disclosures of concerns with potential defaults in its credit facilities are altered by omissions or representations in the Proxy and Registration Statement;

v. Defendants violated Sections 14(a) and 20(a) of the Securities Exchange Act of 1934;

vi. Defendants violated Sections 11 and 15 of the Securities Act of 1933; and,

vii. The individual Defendants violated Section 20(a) of the Exchange Act;

d. Mr. Hurwitz's claim is typical of the claims of the Class he seeks to represent as he specifically pleads material omissions and misrepresentations in the September 3, 2015 Registration Statement and Proxy sent to all Class Members;

e. Mr. Hurwitz is an adequate representative who, as shown in his deposition testimony and filed Declaration, will fairly and adequately protect the Class' interests having retained qualified, experienced and class capable counsel and exhibiting no interests antagonistic to the other LRR unitholders with claims defined in this Order[2];

f. Mr. Hurwitz retained experienced securities class action counsel who will fairly and adequately protect the Class interests: Robbins Arroyo LLP as Lead Class Counsel and Cooch and Taylor, P.A. as Liaison Class Counsel;

g. The quantitative and qualitative components of the questions of law and fact common to the members of the Class including material omissions and misrepresentations relating solely to Vanguard's debt ratios under its credit facilities and ability to pay post-acquisition cash distributions based solely on facts known to the Defendants on or before the September 3, 2015 "Reasons for the Merger" predominate over valid questions on individual damages not considered at this stage but subject to cross-examination, rebuttal experts and potential summary judgment or *in limine* rulings affecting recovery for individual Class members[3]; and,

h. A Fed.R.Civ.P. 23 (b)(3) action is superior to other available methods - such as thousands of small trials challenging the same alleged omission or representation in two mass-produced solicitation documents – which will not fairly and efficiently resolve this controversy under Fed.R.Civ.P. 1 and, as the identity of the Class Members can be determined through their registered units, the Class members are readily ascertainable.

3. **Class Representative**. Under Fed. R. Civ. P. 23, Robert Hurwitz is an adequate representative of the Class and we certify him as the Class representative.

4. **Class Counsel**. Mr. Hurwitz's counsel Robbins Arroyo LLP is authorized to act as Lead Class Counsel on behalf of the Class, along with Liaison Class Counsel Cooch and Taylor, P.A. with respect to all acts required by, or necessary to be taken under, the Rules of Civil Procedure and this Court's Orders and Policies.

5. **Class Notice.** Counsel shall, as soon as practicable, confer regarding appropriate notice to the Class. As soon as possible and no later than **January 16, 2018,** Plaintiff's counsel shall file a motion under our Policies to approve a form and protocol for notice to the Class to satisfy the terms and due process required under Rule 23, including fully describing both parties' position on any remaining irreconcilable objection to the negotiated notice.

KEARNEY, J.

[1] Defendants made two central arguments challenging class certification: Mr. Hurwitz is not an adequate representative under Rule 23 (a)(4) and, questions concerning damages absent a proffered damages model preclude us from finding the questions of law or fact common to the class members predominate over the reliance and damages questions under Rule 23(b)(3).

[2] Defendants challenge Mr. Hurwitz' adequacy as the class representative based on his often incomplete answers to deposition questions and referring to his counsel more often than he could do at trial. But the standard for adequacy in this Circuit allows Mr. Hurwitz to proceed if his counsel is qualified, experienced and generally able to conduct the trial of the class claims and if his interests are not antagonistic to the Class interests. Mr. Hurwitz does not need to have a complete understanding of the legal basis for his claims. *In re Resource Am. Secs. Litig.*, 202 F.R.D. 177, 187 (E.D.Pa. 2001) (rejecting adequacy challenge where defendants alleged plaintiff only became involved after an advertisement, did not read the complaint before signing the certification, only skimmed the complaint and seemed unaware of the underlying facts). We find Mr. Hurwitz is adequate after reading his declaration and his deposition testimony in context. We do not find Mr. Hurwitz's challenged deposition testimony renders his interests antagonistic to the Class interests. He is not the ideal lead plaintiff to explain the intricacies of his losses but being able to impeach Mr. Hurwitz's financial knowledge before the jury is not the standard in this Circuit. We also do not want to set a standard requiring the lead plaintiff explain the subtleties of differing interpretations of defined terms in credit facilities and solicitation documents. The lead plaintiff need not be an expert in econometrics or loss causation theories and, in practical terms, such a lead plaintiff may not be typical in her own regard. Mr. Hurwitz may not be the most knowledgeable unitholder, but he shares the same claims based on alleged material omissions and misrepresentations in the September 3, 2015 Registration Statement and

Proxy as all the unit holders. Defendants do not contest Class Counsel's ability to represent the Class. While we agree with Defendants as to our ability to deny class fiduciary status to a plaintiff who seemingly has no idea of his claims, Mr. Hurwitz is not the candidate for this characterization.

[3] We share Defendants' questions with Mr. Hurwitz not showing a damages model as yet. In oral argument, Class Counsel broadly defined a damages model. We will not deny certification today based on counsel's representations of presently preparing a model of losses often used in securities class actions but, absent such a model timely produced and subject to fulsome cross-examination, we could revisit today's certification as part of summary judgment or *in limine* motions. The jury will need a model to show losses. Otherwise, lacking another basis to challenge the damages model, we decline to today preclude certification based on the predominance analysis used in the antitrust context applied in *Comcast Corp. v. Behrend*, 569 U.S. 27 (2013).