IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ROBERT HURWITZ	:	**CIVIL ACTION**
	:	
v.	:	**NO. 15-711**
	:	
ERIC MULLINS, CHARLES W. ADCOCK, JONATHAN C. FARBER, TOWNES G. PRESSLER, JR., JOHN A. BAILEY, JONATHAN P. CARROLL, SCOTT W. SMITH, RICHARD A. ROBERT, W. RICHARD ANDERSON, BRUCE W. MCCULLOUGH, LOREN SINGLETARY	:	

JUDGMENT ORDER

AND NOW, this 14th day of December 2018, upon considering the Class Representative's unopposed Motions for final approval of a class settlement and plan of allocation and for an award of attorneys' fees and expenses and Class Representative's service award (ECF Doc. No. 195), supporting briefing and Declarations (ECF Doc. Nos. 196 – 200), the Class Representative's Reply (ECF Doc. No. 203), and after our noticed Hearing on Final Approval (ECF Doc. No. 191) where no Class Members appeared, and with no objections to the settlement, attorneys' fees or service award or other relief, it is **ORDERED** the Class Representative's unopposed Motion (ECF Doc. No. 195) is **GRANTED** and

JUDGMENT is entered in favor of Plaintiffs and against Defendants upon our findings:

Findings of fair, adequate and reasonable settlement.

1. We have jurisdiction over the subject matter and over all parties under 28 U.S.C § 1331, including over all the Class Members.[1]

2. As a retired accountant who formerly owned units in LRR Energy L.P. ("LRR") who believed a 2015 Merger Agreement through which Vanguard Natural Resources, LLC ("Vanguard") acquired LRR's common units for less than he believed to be fair, Robert Hurwitz filed this federal securities class action against Vanguard, LRR, Lighthouse Merger Sub, LLC, and the Directors of Vanguard ("Vanguard Director Defendants") and LRR ("LRR Director Defendants"). Mr. Hurwitz alleged, for himself and others similarly situated, a proxy issued by LRR and registration statement issued by Vanguard omitted material information and contained misleading statements regarding Vanguard's debt service and cash distributions anticipated after the Vanguard transaction.[2]

3. On December 29, 2017, we denied Defendants' Motions for summary judgment (ECF Doc. No. 119) without prejudice to be renewed following further discovery.

4. On January 2, 2018, we granted Plaintiff's Motion for Class Certification, preliminarily certifying a class action on behalf of all persons or entities: (a) holding LRR common units as of August 28, 2015 through the October 5, 2015 close of Vanguard's acquisition of LRR, were damaged and assert claims presently sustained in the March 13, 2017 and December 29, 2017

[1] All capitalized terms not otherwise defined in this Order shall have the same meaning as defined by the Stipulation of Settlement (ECF Doc. No. 174), Addendum to the Stipulation of Settlement (ECF Doc. No. 182), and the Second Addendum to the Stipulation of Settlement (ECF Doc. No. 188).

[2] On March 7, 2018, the parties stipulated to the voluntary dismissal of Plaintiff's claims against Vanguard and LRR with prejudice (ECF Doc. No. 137), which we granted by our March 8, 2018 Order (ECF Doc. No. 138). On April 11, 2018, we approved the parties' stipulation to amend the case caption as currently reflected (ECF Doc. No. 155).

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 (ECF Doc. No. 120).

5. We appointed Mr. Hurwitz as a Class Representative, Robbins Arroyo LLP as Lead Class Counsel, and Cooch & Taylor, P.A. as Liaison Class Counsel.

6. On January 17, 2018, we granted the Class Representative's uncontested Motion for an Order approving Class Notice, Notice Procedures, and appointment of Notice Administrator (ECF Doc. No. 126). Following our approval of notice, the Notice Administrator caused the Notice of Proposed Settlement of Class Action and Settlement Hearing and Proof of Claim and Release to be published to potential Class Members (ECF Doc. Nos. 194; 198 at ¶¶ 67-72).

7. The parties engaged in extensive discovery and worked with expert witnesses to prepare for trial.

8. On June 27, 2018, following discovery and a day-long mediation before Robert Meyer, Esquire, the parties filed a Stipulation of Settlement (ECF Doc. No. 174) and Mr. Hurwitz's counsel filed an unopposed Motion for preliminary approval of settlement (ECF Doc. No. 175).

9. On July 11, 2018, Class Counsel filed an amended unopposed Motion for preliminary approval of settlement (ECF Doc. No. 183) and an addendum to the Stipulation of Settlement amending the definition of the "Class."

10. On July 18, 2018, we held a noticed hearing on the Motion for preliminary approval of a class action settlement and, following the hearing, entered an Order allowing the Class Representative to file a supplement to the pending unopposed Motion for approval, amending the parties' prospective obligations, scheduling a pretrial conference, and attaching counsel for trial beginning February 4, 2019 (ECF Doc. No. 187).

11. On July 25, 2018, the Class Representative filed a Second Addendum to the Stipulation of Settlement to handle payments from the Settlement Fund following the Final Approval Order (ECF Doc. No. 188).

12. Twenty-two Class Members validly and timely requested exclusion from the Class (ECF Doc. No. 195-2). Following today's hearing, we removed two Class Members who later filed claims seeking recovery.[3]

13. No Class Member objected to the Notice of Proposed Settlement of Class Action either in writing or at our final approval hearing (*See* ECF Doc. No. 198 at ¶ 47).

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[3] Robert M. Winship and Jo Ann M. Winship initially opted out of the settlement but then timely filed a claim. After review of their filings and hearing from counsel during the final approval hearing, we amend the list of persons identified as opting out to exclude the Winships. Under their claim forms, with supporting documents, they are part of the settlement. As a result, only the following Class Members are excluded: Michael A. Colletti, Muriel J. Colletti, James A. Lange, Grace E. Lange, Sydney P. Ponti, Nan Dee Ponti, Ronald H. Rayner, Kenneth E. Paith, Vernon D. Eason, Reola Eason, Elmer Cruz, Jeanne Bonn-Nazzal, Paul Woolstenhulme, Kay Woolstenhulme, Adam Laird, Paul D. Cox, Glenn Carl Hoaglund, Norman L. Bond, Barbara A. Bond, Thomas A. Washall, Roman Dufrene, Vito J. Celia, Yongqiang Li, Donald E. Cowan, John David Shelburne, Richard M. Horner, Norswing Family Trust, Robert S. Norswing Jr., and Victoria Z. Norswing.

14. We certify the Settlement Class on all claims under Fed. R. Civ. P. 23(a), (b)(3) as all those: holding LRE common units as of August 28, 2015 through the October 5, 2015 close of Vanguard's acquisition of LRE, were damaged, and assert claims presently sustained in the March 13, 2017, December 29, 2017, and March 8, 2018 orders under sections 14(a) and 20(a) of the Exchange Act; and (ii) receiving Vanguard common units in exchange for their LRE 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, December 29, 2017, and March 8, 2018 orders under sections 11 and 15 of the Securities Act; but excluding Defendants, members of the immediate family of each individual Defendant; an officer or director of Vanguard or LRE, 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 if an excluded Person or entity; and also excluding those Persons who, under the Court's January 17, 2018 Order (ECF Doc. No. 126), timely and validly requested to be excluded from the Class.[4]

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[4] The Class is as preliminarily approved on January 2, 2018 (ECF Doc. No. 120) and as amended by the Addendum to Stipulation of Settlement (ECF Doc. No. 182). We review the Settlement Class at this stage even though it is identical to the trial Class. The Settlement Class satisfies the Rule 23 requirements: (1) the Class consists of over 40 members; (2) the Class shares the common question challenging proxy issued by LRR and registration statement issued by Vanguard as omitting material information and containing misleading statements regarding Vanguard's debt service and cash distributions anticipated after the Vanguard transaction; (3) the "interests of the class and the class representative aligned" on the same facts and legal theories; and, (4) Class Counsel has proven to be qualified, experienced, and generally able to conduct the proposed litigation and the Class Representative's interests are not antagonistic to the Class. *See In re NFL Players Concussion Injury Litig.*, 821 F.3d 410, 426-435 (3d Cir. 2016).

15. The Class Representative acted independently, and Class Representative and Class Counsel fairly and adequately represented the Class in connection with the litigation and settlement.

16. The settlement arises from a genuine controversy between the parties and is not the result of collusion, nor was the settlement procured by fraud or misrepresentation.

17. As no Class Member opted out of the Settlement Class, this Settlement releases all claims except for class members who excluded themselves from the Class. (ECF Doc. No. 195-2).[5]

18. After applying each of the factors reaffirmed by our Court of Appeals in *In re Nat'l Football League Players Concussion Injury Litigation*, we approve the Stipulation of Settlement and find the settlement with its two levels of consideration is fair, reasonable, and adequate to all members of the Class. [6]

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[5] This release specifically applies to Robert M. Winship and Jo Ann M. Winship who initially opted out of the settlement but then filed a claim.

[6] When determining whether a proposed class action settlement is fair, reasonable, and adequate, we consider nine factors: "(1) The complexity, expense, and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; and (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation." *In re NFL Players Concussion Injury Litig.*, 821 F.3d at 534-35 (citing *Girsh v. Jepson*, 521 F.2d 153, 156-57 (3d Cir. 1975)). The first factor supports settlement because this action involves complex questions of federal securities law. Litigation of these issues would have likely resulted in significant expense but for the Stipulation of Settlement, including fact questions regarding statements made in the proxy and registration statement of Vanguard's debt servicing and ability to pay cash distributions to unitholders after its acquisition of LRR. The second factor supports settlement because the Class responded favorably to the settlement, as there are no objectors, and a small number of those requesting exclusion from the Class. The third factor supports settlement because the parties reached settlement after litigating this matter since 2015, including a motion to dismiss, written discovery, document production, depositions, experts, and final resolution through private mediation. The fourth factor

19. The Class satisfies Fed. R. Civ. P. 23(a) and is maintainable under Rule 23(b)(2). We certify the Class for purposes of settlement in this case as trial. *See* Doc. 182.

20. The Notice approved by this Court and provided to all members of the Class, including through mailing to all potential Class Members, publication in *Investor's Business Daily* and *PR Newswire*, and on the Notice Administrator's website, as updated, adequately informing Class Members the terms of the Settlement and the procedure to request written exclusion from the Class, and to be heard at our Final Approval Hearing. Class Notice satisfied Fed. R. Civ. P. 23(e)(1).

21. Under the terms in the Stipulation of Settlement, the parties forever release and discharge defined claims against each other, except for enforcing terms of the Settlement or this Order.

22. The way the Settlement Fund will be disbursed as defined in the Court-approved Notice of Proposed Settlement of Class Action and Settlement Hearing sent to Class Members, is

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supports settlement because although the Class Representative's claims survived the pleadings stage and a motion to dismiss and summary judgment, we denied the motion for summary judgment without prejudice to be renewed after further discovery. The fifth factor supports settlement as the risk of establishing damages is great given Defendants' argument as of mid-2014, oil and gas prices dropped, steeply declining to fifty percent by January 2015 and the unit prices of Vanguard and LRE plunged. As to the sixth factor, settlement precludes the risk associated with trial with several evidentiary challenges. The seventh factor weighs in favor of settlement because the parties dismissed Vanguard and LRE, leaving no corporate defendant, Vanguard declared Chapter 11 bankruptcy during the pendency of this action, and the settlement proceeds are being mostly paid from the Director Defendants' Director and Officers' insurance coverage which Class Counsel swears is limited in this litigation before the parties' successful mediation. The eighth and ninth factors support a finding of a reasonable, fair, and adequate settlement considering the risks the Class Representative faced in the litigation, the potential risk of recovery, and the higher than average percentage of recovery of total possible damages when compared to similar securities class action litigation nationwide.

fair and provides a reasonable basis upon which to allocate the proceeds among Class Members, with due consideration given to administrative convenience and necessity.

23. No members of the Class attended the December 14, 2018 Final Approval Hearing, notice of which was included in the Class Notice, to raise objections, advance questions, or oppose the settlement.

Approval of class counsel fee and costs.

24. We award $2,400,00 in fees, which is 30% of the negotiated $8,000,000 Settlement Amount, and $457,541.63 in costs plus interest on both amounts to Class Counsel. Class Counsel provided highly competent representation for the Class and are awarded $2,400,000 in fees as reduced from a lodestar of $2,375,740 for Class Counsel, $81,660 for Liaison Counsel, and $457,541.63 in demonstrated expenses.[7] These fees and costs shall be paid to Class Counsel under the Stipulation of Settlement upon payment of the first consideration to the Class Members.

[7] Class Counsel seeks reimbursement of expenses above the $325,000 cap in the Notice. We scrutinized this request at the final approval hearing. No Class Member objected to this additional expense. Class Counsel explained the difference is due to their error in inadvertently failing to include an invoice from an expert who provided an expert report on damages produced to Defendants and used during the mediation. This report provided a benefit to the Class. This error further causes no prejudice to the Class Members based on disclosures in the Notice; the Notice represented each claimant could expect a recovery of $.50 per unit but Class Counsel today estimated each claimant could expect $1.57 per unit in addition to the $5.00 per Class Member. This $1.57 per unit is after paying the requested expenses at the higher – and more accurate – number. Absent prejudice or an objection, we will allow reimbursement of costs at the requested amounts.

a. Exercising our discretion,[8] we conduct a "thorough judicial review" to determine the amount of any award to counsel.[9] "Judicial deference to the results of private negotiations is undoubtedly appropriate for many settlements, but not for class action settlements, including their attorney fee terms. 'That the defendant in form agrees to pay the fees independently of any monetary award or injunctive relief provided to the class in the agreement does not detract from the need carefully to scrutinize the fee award.'"[10]

b. Class Counsel conducted extensive investigation, research, focused discovery and evaluated respective risks of further litigation, including the risk of decertification of the certified class, additional costs, and delay associated with further prosecution of this action. The parties reached the Agreement because of arms-length negotiations through private mediation. Class Counsel's fees are reasonable and necessary for the benefit of the Class.[11]

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[8] *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prod. Liab. Litig.*, 55 F.3d 768, 821 (3d Cir. 1995).

[9] *In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions v. Prudential Ins. Co. of Am.*, 148 F.3d 283, 333 (3d Cir. 1998); *In re Gen. Motors*, 55 F.3d at 819.

[10] *In re Southwest Airlines Voucher Litigation*, 799 F.3d 701, 713 (7th Cir. 2015) (quoting *Staton v. Boeing Co.*, 327 F.3d 938, 964 (9th Cir. 2003)).

[11] We consider seven factors to analyze the reasonableness of the requested fee: (1) the size of the fund created and the number of persons benefitted; (2) the presence or absence of substantial objections by members of the class to the settlement terms and/or fees requested by counsel; (3) the skill and efficiency of the attorneys involved; (4) the complexity and duration of the litigation; (5) the risk of nonpayment; (6) the amount of time devoted to the case by plaintiffs' counsel; and (7) the awards in similar cases. As to the first factor, the Settlement Fund fully addresses the claims under the approved Settlement Agreement providing an immediate benefit to each Settlement Class member. The second factor supports the proposed fee because there were no objectors. The third factor supports the proposed fee as Class Counsel possesses substantial experience prosecuting securities fraud claims in this difficult matter involving declining prices in the energy sector and accordant damages challenges. The fourth factor supports the proposed fee because this securities fraud challenge to a proxy and registration statement involving fluctuating values in the energy industry in 2015 and thereafter is complex and required extensive written discovery, several depositions and retaining at least three experts. Litigation of these issues would

c. As a cross-check, we reviewed Class Counsel's lodestar amount of $2,457,000 for 5,060 hours of work by Class Counsel and 138.60 hours by Liaison Counsel. This requested fee is less than the lodestar.

25. **Service Award.** We approve a Service Award of $25,000 to Mr. Hurwitz finding it to be fair and reasonable for his efforts on behalf of Class Members. A former financial professional, he sought counsel, produced his documents, instructed the filing of this suit, reviewed pleadings, prepared and appeared for a November 2017 deposition, regular meetings with Class Counsel, discussing the parameters for resolving the Class claims, and authorizing the settlement. He estimates investing over 150 hours since 2015 in protecting the Class interest. ECF Doc. No. 200.

26. **Approval of allocation.** We approve the Plan of Allocation as it provides consideration for all Class Members in exchange for a release, additional consideration for the 2,198 Class Members filing claims, and allows repeated distributions as economically feasible before a *de minimus* cy pres distribution to a worthy charity in the Houston, Texas home of the parties including Class Members.

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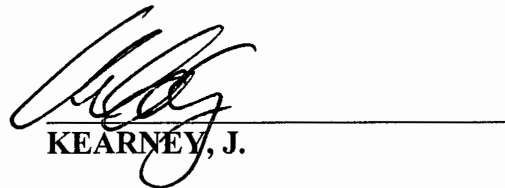
have likely resulted in an increasing and significant expense but for the Settlement. The fifth factor supports the proposed fee because of the risk inherent in Class Counsel's decision to take this case on a contingency fee basis, particularly considering the financial losses and eventual corporate bankruptcies. The sixth factor supports the proposed fee because Class Counsel and Liaison Counsel invested almost 5,200 hours since 2015 at hourly rates ranging from blended rates of $157.46 to a top hourly rate of $825, with much of the time invested by associate attorneys with hourly rates ranging from $375 to $575. Our approval today does not equate to a finding these hourly rates are the fair rates in this District (particularly as to associate attorneys) but no Class Member objects and even if we were to redline the hourly rates based on fees in this District, Class and Liaison Counsel have shown the thirty percent is appropriate for their efforts in this difficult case. The seventh factor supports the proposed fee as consistent with fee awards of up to thirty percent in this District.

27. **Dismissal of Claims.** Excepting those individuals and entities who validly and timely requested exclusion from the Class, the claims of all Class Members based on or arising out of any acts, facts, transactions, occurrences, representations, or omissions which are alleged, or which could have been alleged, in this Class Action Complaint, on the merits are **dismissed with prejudice** and without costs to any of the parties as against any other settling party, except as provided in the Stipulation of Settlement.

28. The Clerk of Court shall **close this case** retaining jurisdiction only to enforce this Order.



KEARNEY, J.