

IN THE CIRCUIT COURT FOR MORGAN COUNTY  
NINTH JUDICIAL DISTRICT  
THE STATE OF TENNESSEE

MARCIA GOLDBERG, Individually and ) Case No. 2015-CV-33  
on Behalf of All Others Similarly Situated, )  
Plaintiff, ) Judge Pemberton  
vs. )  
DELOY MILLER, et al, )  
Defendants. )  
\_\_\_\_\_ )

KENNETH GAYNOR, Individually and on ) Case No. 2015-CV-34  
Behalf of All Others Similarly Situated, )  
Plaintiff, ) Judge Pemberton  
vs. )  
DELOY MILLER, et al, )  
Defendants. )  
\_\_\_\_\_ )

**STIPULATION AND AGREEMENT OF SETTLEMENT**

This Stipulation and Agreement of Settlement (“Stipulation”) is made and entered into by and between Plaintiffs Kenneth Gaynor, Marcia Goldberg, and Christopher R. Vorrath (collectively, “Plaintiffs”), on behalf of themselves and all other members of the proposed Settlement Class,<sup>1</sup> on the one hand, and Underwriter Defendants MLV & Co. LLC, National Securities Corporation, Maxim Group, LLC, Aegis Capital Corporation, Northland Capital Markets, Dominick & Dominick, LLC (n/k/a Dominick & Dickerman LLC), Ladenburg Thalmann & Co. Inc., and I-Bankers Securities, Inc. (“Underwriter Defendants”), and, to the extent they have executed this Stipulation, Individual Defendants Deloy Miller, Scott M. Boruff, David J. Voyticky, Catherine A. Rector (n/k/a Catherine Rainey), David M. Hall, Merrill A. McPeak, Gerald Hannahs, Charles M. Stivers, Don A. Turkleson, Bob G. Gower, Joseph T. Leary, William B. Richardson, and Marceau N. Schlumberger (“Individual Defendants”) (collectively, “Defendants”), on the other (those Underwriter Defendants and Individual Defendants who have executed this Stipulation are referred to collectively as the “Settling Defendants,” and together with Plaintiffs, the “Settling Parties”), by and through their counsel of record in the above-captioned litigation pending in the Circuit Court for Morgan County, Ninth Judicial District in the State of Tennessee. This Stipulation is intended by the Settling Parties to fully, finally, and forever resolve, discharge, and settle the Released Claims against Released Defendant Parties and

---

<sup>1</sup> All words or terms used herein that are capitalized shall have the meanings ascribed to those words or terms herein and in the “Definitions.”

Released Defendants' Claims against all Released Parties, upon and subject to the terms and conditions hereof and subject to the Court's approval.

## **I. THE LITIGATION**

On November 9, 2015, Kenneth Gaynor (*Gaynor v. Miller*, No. 2015-CV-34) and Marcia Goldberg (*Goldberg v. Miller*, No. 2015-CV-33) filed complaints in this Court alleging violations of Sections 11, 12(a)(2), and 15 of the Securities Act of 1933 ("Securities Act") relating to offerings of Miller Energy's 10.75% Series C Cumulative Redeemable Preferred Stock ("Series C") and 10.5% Series D Fixed Rate/Floating Rate Cumulative Redeemable Preferred Stock ("Series D") (collectively, "Offerings"), against former officers and directors of Miller Energy and the underwriters of the Offerings. In response, on December 9, 2015, the Underwriter Defendants, pursuant to 28 U.S.C. §§1441 and 1446, removed both cases to the U.S. District Court for the Eastern District of Tennessee, Knoxville Division. *See Gaynor v. Miller*, No. 3:15-cv-00545 ("Gaynor Action"), ECF 1; *Goldberg v. Miller*, No. 3:15-cv-00546 (E.D. Tenn.) ("*Goldberg Action*"), ECF 1.<sup>2</sup> On January 8, 2016, both Kenneth Gaynor and Marcia Goldberg filed motions to remand which were denied on September 8, 2016, resulting in the continuation of the Litigation in federal court. ECF 73.

On November 7, 2016, the Federal Court entered an order consolidating the *Gaynor Action*, *Goldberg Action*, and another related action, *Hull v. Miller*, No. 3:16-cv-00232 (E.D. Tenn.) ("*Hull Action*") (collectively, "Federal Action"), finding they "present[ed]"

---

<sup>2</sup> All references to "ECF \_\_\_" herein refer to the *Gaynor Action* unless otherwise defined.

common questions of law or fact,” as they involved the same subject matter and presented the same legal issues. ECF 84. The following day, plaintiffs moved for appointment as lead plaintiffs under the Private Securities Litigation Reform Act of 1995 (“PSLRA”). ECF 86, 87. In an Order dated December 27, 2016, the Federal Court appointed Kenneth Gaynor, Marcia Goldberg, Christopher R. Vorrath, and Gabriel R. Hull as Lead Plaintiffs, Robbins Geller Rudman & Dowd LLP as Lead Counsel, and Barrett Johnston Martin & Garrison, LLC as Local Counsel. ECF 91.

The operative complaint, the Master Consolidated Complaint, was filed on January 5, 2017 (“Master Complaint”). ECF 92. The Master Complaint alleges violations of Sections 11, 12(a)(2), and 15 of the Securities Act, on behalf of Persons who purchased or otherwise acquired the securities of Miller Energy pursuant and/or traceable to the September 6, 2012 registration statement (“Registration Statement”) and prospectus supplements that were issued in connection with the Offerings. The named defendants are the Underwriter Defendants and the Individual Defendants. The Master Complaint alleges that Plaintiffs’ strict liability claims arise from Miller Energy’s allegedly false and misleading financial accounting and reporting related to the valuation of certain oil and gas assets (“Alaska Assets”). The Master Complaint also alleges that in December 2009, Miller Energy purchased the Alaska Assets for \$2.25 million in cash, along with the assumption of certain liabilities valued at approximately \$2 million and, within weeks, reported them at an allegedly overstated value of approximately \$480 million and recognized a one-time “bargain purchase gain” of \$277 million for its fiscal third quarter ended January 2010 and fiscal year ended April 2010. Plaintiffs assert that the Offerings

incorporated by reference certain periodic financial reporting filings Miller Energy had previously made with the U.S. Securities and Exchange Commission (“SEC”), as well as all future filings occurring up until the termination of the Offerings, including the alleged overstated value of the Alaska Assets. Following the close of the Offerings, Plaintiffs allege that a series of disclosures revealed that the Registration Statement was allegedly false and misleading at the time it was issued because the Company allegedly overstated the value of the Alaska Assets. In September 2015, Miller Energy’s Series C and Series D preferred shares were delisted after a more than 98% decline in their value.

On February 21, 2017, Defendants filed motions to dismiss the Master Complaint. Following full briefing on Defendants’ motions to dismiss, the Federal Court granted in part and denied in part Defendants’ motions to dismiss. ECF 106. In doing so, the Federal Court allowed Plaintiffs’ Section 11 claims against the Underwriter Defendants and Section 15 claims against the Individual Defendants to proceed. *Id.* On September 25, 2017, Defendants filed their answers and defenses to the Master Complaint. Specifically, Settling Defendants denied, and continue to deny, each and all of the Master Complaint’s allegations. *See, e.g.*, ECF 112. Settling Defendants contend, among other things, that Plaintiffs lacked standing to pursue their claims, that their claims were time barred, that their claims lack merit, and that Settling Defendants reasonably relied on the expertise of Miller Energy’s auditors and other experts. *Id.*

The parties engaged in fact discovery involving Plaintiffs, Defendants, and third-parties, resulting in the production and review of more than 1.6 million pages of documents. On January 19, 2018, Plaintiffs moved for class certification seeking to: (a) certify the

proposed class of Series C and Series D Preferred Stock shareholders; (b) appoint Kenneth Gaynor, Marcia Goldberg, Gabriel R. Hull, and Christopher R. Vorrath as class representatives; and (c) appoint Robbins Geller Rudman & Dowd LLP as class counsel. ECF 130. In their opposition, Defendants did not challenge numerosity, typicality, commonality, or superiority, but instead focused their arguments on predominance and adequacy of Plaintiffs as potential class representatives. ECF 140. On August 6, 2018, Magistrate Judge Poplin issued a Report and Recommendation to grant Plaintiffs' motion for class certification in its entirety but the recommendation was never adopted by the Court. ECF 167.

On June 1, 2018, Plaintiffs filed a Renewed Motion to Remand, predicated on *Cyan, Inc. v. Beaver Cnty. Emps. Ret. Fund*, \_\_ U.S. \_\_, 138 S. Ct. 1061, 1078 (2018). ECF 155. On August 8, 2018, the Underwriter Defendants and Plaintiffs agreed to pursue mediation and jointly moved the Court for a temporary stay of the Litigation. On August 9, 2018, the Federal Action was stayed for mediation. ECF 170. On September 5, 2018, mediation was held with Michelle Yoshida, Esq. of Phillips ADR and involved an extended effort to settle the claims against the Underwriter Defendants, and was preceded by the exchange of mediation statements. Although the mediation was unsuccessful, the parties continued to engage in settlement discussions thereafter.

On April 9, 2019, after months of continued negotiations, the parties notified the Federal Court that mediation was unsuccessful and requested the stay be lifted. ECF 181. Instead of lifting the stay, the Court ordered all parties to mediation with Honorable Christopher H. Steger, a United States Magistrate Judge for the Eastern District of

Tennessee. ECF 182. The mediation was held on August 17, 2019, and failed to result in a settlement.

The Federal Action remained stayed until December 5, 2019, when the Federal Court lifted the stay and set jury trial for July 7, 2020. ECF 184. The next day, the Federal Court granted Plaintiffs' Renewed Motion to Remand. ECF 185. The parties continued to litigate the part of the Federal Action that remained in the Eastern District of Tennessee, until March 31, 2020, when the Court issued an order clarifying remand, dismissing the case without prejudice, and directing the clerk to close the case. *Hull* Action, ECF 232.

Plaintiffs, through their Counsel, state that they conducted a thorough investigation relating to the claims, defenses, and underlying events and transactions that are the subject of the Litigation. Plaintiffs further state that this process has included reviewing and analyzing, among other things: (a) SEC filings by Miller Energy; (b) media and analyst reports regarding the Company; (c) press releases and shareholder communications regarding the Company and the Offerings; (d) documents received from the SEC in response to the Freedom of Information Act request; (e) the Company's internal documents; (f) documents produced by Defendants; (g) documents produced by numerous third-parties; and (h) extensive discussion with their experts.

Following continued, extensive arm's-length negotiations, Plaintiffs and Defendants reached agreements to settle all of the claims against the Defendants in the Litigation for a total of \$7,600,000 in cash (the "Settlement Amount"), inclusive of attorneys' fees, costs and expenses, awards to the Plaintiffs and administrative and other settlement costs, subject to the negotiation of the terms of a stipulation and approval by

the Court. This Stipulation sets forth the agreement reached by Plaintiffs and the various Settling Defendants.

## **II. PLAINTIFFS' CLAIMS AND THE BENEFIT OF THE SETTLEMENT**

Plaintiffs believe that the claims and allegations asserted in the Litigation against Defendants have merit and that the information developed to date supports the claims and allegations asserted. However, Plaintiffs and Lead Counsel recognize and acknowledge the expense and length of continued proceedings necessary to prosecute the Litigation against Defendants through trial and appeals. They also have taken into account the years already spent litigating the claims and the uncertain outcome and risk of any continued litigation, especially in complex actions such as this Litigation, as well as the difficulties and delays inherent in such litigation. Lead Counsel is also mindful of the inherent problems of proof and the possible defenses to the claims alleged by Defendants in the Litigation. In particular, Plaintiffs and Lead Counsel have considered the limited funds available to satisfy a judgment against Defendants. Based on their evaluation, Plaintiffs and Lead Counsel believe that the Settlement set forth in this Stipulation confers substantial monetary benefits upon the Settlement Class and is in the best interests of Plaintiffs and the Settlement Class.

## **III. SETTLING DEFENDANTS' DENIAL OF WRONGDOING AND LIABILITY**

Settling Defendants have denied and continue to deny any wrongdoing or that they have committed any act or omission giving rise to any liability or violation of law, including the United States securities laws. Settling Defendants have denied and continue



to deny each and every one of the claims and allegations asserted in the Litigation, including all claims in the Master Complaint. Settling Defendants also have denied and continue to deny, *inter alia*, the allegations that Plaintiffs or Settlement Class Members have suffered damage or were otherwise harmed by the conduct alleged in the Litigation. Settling Defendants have asserted and continue to assert that, at all times, they acted in good faith and in a manner they reasonably believed to be in accordance with all applicable rules, regulations, and laws.

Nonetheless, Settling Defendants have determined that it is desirable and beneficial to them that the Litigation be settled in the manner and upon the terms and conditions set forth in this Stipulation to avoid the further expense, inconvenience, and burden of the Litigation, the distraction and diversion of personnel and resources, and to obtain the conclusive and complete dismissal of this Litigation as to them and release of Released Claims against Released Defendant Parties.

#### **IV. TERMS OF STIPULATION AND AGREEMENT OF SETTLEMENT**

NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among Plaintiffs (for themselves and the Settlement Class) and Settling Defendants, by and through their respective counsel or attorneys of record, that, subject to the approval of the Court, the Litigation and the Released Claims shall be, fully, finally, and forever compromised, settled, released, discharged, and dismissed with prejudice, and without costs, upon and subject to the following terms and conditions:

## **1. Definitions**

Unless otherwise noted, as used in this Stipulation the following terms have the meanings specified below:

1.1 “Authorized Claimant” means a Settlement Class Member who submits a valid Proof of Claim and Release form to the Claims Administrator that is accepted for payment pursuant to the terms of this Stipulation.

1.2 “Claim(s)” means a paper claim submitted on a Proof of Claim form or an electronic claim that is submitted to the Claims Administrator.

1.3 “Claims Administrator” means Gilardi & Co. LLC retained by Lead Counsel, subject to Court approval, to provide all notices approved by the Court to Settlement Class Members, to process Proofs of Claim, and to administer the Settlement.

1.4 “Court” means the Circuit Court for Morgan County, Ninth Judicial District in the State of Tennessee.

1.5 “Defendants” means Underwriter Defendants MLV & Co. LLC, Maxim Group, LLC, Williams Financial Group, National Securities Corporation, Aegis Capital Corporation, Northland Capital Markets, Dominick & Dominick, LLC (n/k/a Dominick & Dickerman LLC), Ladenburg Thalmann & Co. Inc. and I-Bankers Securities, Inc., and Individual Defendants Deloy Miller, Scott M. Boruff, David J. Voyticky, Catherine A. Rector (n/k/a Catherine Rainey), David M. Hall, Merrill A. McPeak, Gerald Hannahs, Charles M. Stivers, Don A. Turkleson, Bob G. Gower, Joseph T. Leary, William B. Richardson, Marceau N. Schlumberger, and Paul W. Boyd.

1.6 “Defendants’ Counsel” means Leibowitz Law Firm, PLLC; Marcum & Petroff, P.C.; Egerton, McAfee, Armistead & Davis P.C.; Frantz, McConnell & Seymour, LLP; Paine, Tarwater, and Bickers, LLP; Hagood Moody Hodge PLC; Baker & McKenzie LLP; Willkie Farr & Gallagher LLP; Baker, Donelson, Bearman, Caldwell & Berkowitz P.C.; Ritchie Davies, Johnson & Stovall, P.C., and to the extent they have executed this Stipulation, *pro-se* defendants Charles M. Stivers, Catherine Rainey, Gerald Hannahs, David Hall, and General Merrill A. McPeak.

1.7 “Effective Date” or the date upon which this Settlement becomes “effective,” means the date by which all of the events and conditions specified in ¶7.1 of the Stipulation have been met and have occurred.

1.8 “Escrow Account” means the separate escrow account at a national banking institution, chosen by Lead Counsel, that is established to receive the Settlement Amount for the benefit of the Settlement Class pursuant to this Stipulation and subject to the jurisdiction of the Court. Lead Counsel shall choose only a national banking institution to hold the Escrow Account that has passed the most recent Federal Reserve annual stress test.

1.9 “Escrow Agent” means the law firm Robbins Geller Rudman & Dowd LLP or its successor.

1.10 “Fee and Expense Application” means Lead Counsel’s application for an award of attorneys’ fees and/or payment of litigation expenses incurred in prosecuting the case, including any award pursuant to 15 U.S.C. §77z-1(a)(7) of the PSLRA.

1.11 “Final” means when the last of the following with respect to the Judgment approving the Stipulation, substantially in the form of Exhibit B attached hereto, shall occur: (a) the expiration of the time to file a motion to alter or amend the Judgment under Tennessee Rule of Civil Procedure 59.04 without any such motion having been filed; (b) the time in which to appeal the Judgment has passed without any appeal having been taken; and (c) if a motion to alter or amend is filed or if an appeal is taken, immediately after the determination of that motion or appeal so that it is no longer subject to any further judicial review or appeal whatsoever, whether by reason of affirmance by a court of last resort, lapse of time, voluntary dismissal of the appeal or otherwise in such a manner as to permit the consummation of the Settlement substantially in accordance with the terms and conditions of this Stipulation. For purposes of this paragraph, an “appeal” shall include any petition for a writ of certiorari or other writ that may be filed in connection with approval or disapproval of this Settlement, but shall not include any appeal that concerns only the issue of Plaintiffs’ Counsel’s attorneys’ fees and expenses, payments to Plaintiffs in connection with their representation of the Settlement Class, the Plan of Allocation of the Net Settlement Fund, as hereinafter defined, or the procedures for determining Authorized Claimants’ recognized claims.

1.12 “Judgment” means the Final Judgment and Order of Dismissal with Prejudice to be rendered by the Court, substantially in the form attached hereto as Exhibit B, as well as any form of final judgment that may be entered by the Court in a form other than the form attached hereto as Exhibit B and where none of the Settling Parties elect to

terminate this Settlement by reason of such variance, consistent with the terms of this Stipulation.

1.13 “Lead Counsel” means the law firm Robbins Geller Rudman & Dowd LLP and any of its members, partners, associates, and/or employees.

1.14 “Litigation” means the civil actions captioned *Gaynor v. Miller*, No. 2015-CV-34 and *Goldberg v. Miller*, No. 2015-CV-33, pending in the Circuit Court for Morgan County, Ninth Judicial District in the State of Tennessee, before the Honorable Michael S. Pemberton, Circuit Court Judge.

1.15 “Miller Energy” or “Company” means Miller Energy Resources, Inc.

1.16 “Net Settlement Fund” means the Settlement Fund less any attorneys’ fees, costs, expenses, and interest and any award to Plaintiffs, provided for herein or approved by the Court and less Notice and Administration Expenses, Taxes and Tax Expenses, and other Court-approved deductions.

1.17 “Notice” means the Notice of Pendency of Class Action, Proposed Class Action Settlement, and Motion for Attorneys’ Fees and Expenses to be sent to Settlement Class Members, which, subject to approval of the Court, shall be substantially in the form attached hereto as Exhibit A-1.

1.18 “Notice and Administration Expenses” means costs and expenses actually incurred in connection with providing notice to the Settlement Class, locating Settlement Class Members, soliciting claims, assisting with the submission of claims, processing Proofs of Claim, administering and distributing the Net Settlement Fund to Authorized Claimants, and paying escrow fees and costs, if any.

1.19 “Person(s)” means a natural person, individual, corporation (and all its divisions and subsidiaries thereof), partnership, limited partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity and their spouses, heirs, predecessors, successors, representatives, or assignees.

1.20 “Plaintiffs’ Counsel” means Robbins Geller Rudman & Dowd LLP, Barrett Johnston Martin & Garrison, LLC, Law Offices of Curtis V. Trinko, and any attorney or firm who has appeared in the Litigation on behalf of any of the Plaintiffs or the Settlement Class.

1.21 “Plan of Allocation” means a plan or formula of allocation of the Net Settlement Fund whereby the Net Settlement Fund shall be distributed to Authorized Claimants.

1.22 “Proof of Claim” means the Proof of Claim and Release form for submitting a claim, which, subject to approval of the Court, shall be substantially in the form attached hereto as Exhibit A-2.

1.23 “Released Claims” means any and all complaints, claims, third-party claims, cross-claims, counterclaims, demands, allegations, liabilities, obligations, promises, agreements, controversies, actions, causes of action, suits, rights, damages, costs, losses, debts, penalties, fines, charges, and expenses (including the attorneys’ fees, expert fees, and disbursements of counsel and other professionals) of any and every nature whatsoever, whether in law or in equity, whether arising under federal, state, local, or foreign statutory or common law, or any other law, rule, or regulation (whether foreign or domestic),

whether currently known or unknown, fixed or contingent, suspected or unsuspected, foreseen or unforeseen, ripened or unripened, accrued or unaccrued, liquidated or unliquidated, or matured or not matured, whether arising in equity or under the law of contract, tort, malpractice, statutory breach, or any other legal right or duty, whether direct, class, individual, representative, or in any other capacity, and to the fullest extent that the law permits their release in this lawsuit, that Plaintiffs, or any other member of the Settlement Class could have asserted against Released Defendant Parties in the Litigation or in any forum that arise out of, relate to, are connected with, or in any way concern (a) the allegations, transactions, facts, matters, occurrences, representations, or omissions involved, set forth, alleged, or referred to in the Litigation, and that (b) arise out of, are based upon, or relate to in any way, to the purchase or acquisition of Miller Energy's Series C and/or Series D Preferred Stock. Released Claims only apply to Released Parties and do not include: (i) claims asserted in *Cosby v. KPMG, LLP*, No. 3:16-cv-121 (E.D. Tenn.), or (ii) claims to enforce the Settlement.

1.24 "Released Defendant Parties" means Settling Defendants, Defendants' Counsel, and each of their respective predecessors, successors, parent entities, sister entities, past, present, or future subsidiaries, affiliates, related companies, shareholders, principals, assigns, assignors, heirs, legatees, devisees, executors, administrators, estates, spouses, immediate family members, receivers and trustees, settlors, beneficiaries, officers, directors, employees, servants, agents, partners, insurers, reinsurers, representatives, attorneys, legal representatives, and successors-in-interest, and any entity in which the Released Defendant Parties have or had a controlling interest.

1.25 “Released Defendants’ Claims” means all claims and causes of action of every nature and description, including both known claims and unknown claims, whether arising under federal, state, common or foreign law, or any other law, that Released Defendant Parties could have asserted against any of Released Plaintiff Parties or against any other Released Defendant Parties, that arise out of or relate in any way to the institution, prosecution, or settlement of the claims in the Litigation, except for claims relating to the enforcement of the Settlement.

1.26 “Released Parties” means Released Defendant Parties and Released Plaintiff Parties.

1.27 “Released Plaintiff Parties” means each and every Settlement Class Member, Plaintiffs, Plaintiffs’ Counsel, and each of their respective past or present trustees, officers, directors, partners, employees, affiliates, contractors, auditors, principals, agents, attorneys, predecessors, successors, assigns, insurers, parents, subsidiaries, general or limited partners or partnerships, and limited liability companies; and the spouses, members of the immediate families, representatives, and heirs of any Released Plaintiff Party (in their capacity as such) who is an individual, as well as any trust of which any Released Plaintiff Party is the settlor or which is for the benefit of any of their immediate family members. Released Plaintiff Parties does not include any Person who timely and validly seeks exclusion from the Settlement Class.

1.28 “Settlement” means the resolution of the Litigation as to the Settling Defendants in accordance with the terms and provisions of this Stipulation.



1.29 “Settlement Amount” means the total principal amount of seven million and six hundred thousand U.S. dollars in cash (\$7,600,000) to be paid by wire transfer or check sent by overnight mail to the Escrow Agent pursuant to ¶2.1 of this Stipulation.

1.30 “Settlement Class” or “Settlement Class Member(s)” means, for purposes of Settlement only, all Persons or entities who purchased or otherwise acquired Miller Energy’s Series C and/or Series D Preferred Stock on or after February 13, 2013, and who were damaged thereby. Excluded from the Settlement Class are all Defendants in these actions and their families, the officers and directors and affiliates of Defendants, at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns, and any entity in which Defendants have or had a controlling interest. Also excluded from the Settlement Class is bankrupt Miller Energy Resources, Inc. and its successors and assigns, including Glacier Oil & Gas Corporation, Williams Financial Group, and Paul W. Boyd. Also excluded from the Settlement Class are those Settlement Class Members who timely and validly request exclusion from the Settlement Class pursuant to the requirements set by the Court.

1.31 “Settling Defendants” means those Defendants who have executed this Stipulation, either themselves or through counsel.

1.32 “Settlement Fund” means the Settlement Amount plus all interest and accretions thereto.

1.33 “Settlement Hearing” means the hearing set by the Court under Tennessee Rule of Civil Procedure 23.05 to consider final approval of the Settlement.

1.34 “Settling Parties” means Settling Defendants and Plaintiffs, on behalf of themselves and the Settlement Class.

1.35 “Stipulation” means this Stipulation and Agreement of Settlement, including all recitals and Exhibits hereto.

1.36 “Summary Notice” means the Summary Notice of Pendency of Class Action, Proposed Class Action Settlement, and Motion for Attorneys’ Fees and Expenses for publication, which, subject to approval of the Court, shall be substantially in the form attached hereto as Exhibit A-3.

1.37 “Taxes” means any and all taxes, fees, levies, duties, tariffs, imposts, and other charges of any kind (together with any and all interest, penalties, additions to tax and additional amounts imposed with respect thereto) imposed by any governmental authority.

1.38 “Unknown Claims” means: (a) any Released Claims that Plaintiffs or any Settlement Class Member does not know or suspect to exist in his, her, or its favor at or after, as applicable, the time he, she or it enters into this Stipulation, or at or after the release of the Released Defendant Parties (pursuant to the terms of this Stipulation) which, if known by him, her, or it, might have affected his, her, or its settlement with and release of the Released Defendant Parties, or might have affected his, her, or its decision not to object to or opt out of this Settlement; and (b) any Released Defendants’ Claims that Released Defendant Parties do not know or suspect to exist in his, her, or its favor at or after the time of the release of the Released Plaintiff Parties (pursuant to the terms of this Stipulation), which if known by him, her, or it, might have affected his, her, or its settlement with and release of the Released Plaintiff Parties. With respect to any and all Released Claims and

Released Defendants' Claims, the Settling Parties stipulate and agree that, upon the Effective Date, they shall expressly waive and relinquish, and each of the Settlement Class Members shall be deemed to have waived, and by operation of the Judgment shall have expressly waived and relinquished any and all provisions, rights, and benefits conferred by California Civil Code §1542 or the laws of the United States or any state or territory of the United States, or other jurisdiction or principle of common law or foreign law that is similar, comparable, or equivalent to California Civil Code §1542, which provides:

**A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.**

Settling Parties and/or a Settlement Class Member may hereafter discover facts in addition to or different from those which he, she or it now knows or believes to be true with respect to the subject matter of the Released Claims and Released Defendants' Claims, but Settling Parties upon the Effective Date shall expressly fully, finally, and forever settle and release, and each Settlement Class Member, upon the Effective Date, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever settled and released, any and all Released Claims and Released Defendants' Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct which is negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional

facts. Settling Parties acknowledge, and Settlement Class Members shall be deemed by operation of law (including by operation of the Judgment) to have acknowledged, that the foregoing waiver and inclusion of Unknown Claims in the definition of Released Claims were separately bargained for and are a key element of the Settlement of which this release is a part.

## **2. The Settlement**

### **a. The Settlement Amount**

2.1 Settling Defendants shall pay or cause to be paid their share of the Settlement Amount of \$7,600,000 into the Escrow Account no later than 30 calendar days from entry of the Preliminary Approval Order provided that Settling Defendants have been provided with all necessary funding instructions and a completed W-9 for the Escrow Account at least seven (7) calendar days prior to that funding deadline. None of the Settling Defendants shall be obligated to pay or deposit more than the specific share of the Settlement Amount that she, he or it agreed to contribute in the Supplemental Agreement. If one or more Settling Defendants do not deposit their share of the Settlement Amount to the Escrow Account, after giving such Settling Defendant five (5) calendar days to cure any such nonpayment, the Settlement may be voided in its entirety at the option of Plaintiffs.

2.2 The obligations incurred pursuant to this Stipulation shall be in full and final disposition and settlement of all Released Claims against Released Defendant Parties. Each Settling Defendant's share of the Settlement Amount is that Defendant's sole monetary responsibility under this Stipulation, and Settlement Class Members who do not

timely seek to exclude themselves from the Settlement Class shall not look to Released Defendant Parties for satisfaction of any and all Released Claims. Settling Defendants are not responsible for payment of Notice and Administration Expenses, or any out-of-pocket expenses, other than out of the Settlement Amount, as provided herein.

**b. The Escrow Agent**

2.3 The Escrow Agent shall invest the Settlement Amount deposited pursuant to ¶2.1 hereof in United States Agency or Treasury Securities or other instruments backed by the Full Faith and Credit of the U.S. Government or an Agency thereof, or fully insured by the U.S. Government or an Agency thereof and shall reinvest the proceeds of these instruments as they mature in similar instruments at their then-current market rates. All risks related to the investment of the Settlement Fund shall be borne by the Settlement Fund. Released Parties shall have no responsibility for, interest in, or liability whatsoever with respect to the investment decisions or the actions of the Escrow Agent, or any transactions executed by the Escrow Agent.

2.4 The Escrow Agent shall not disburse the Settlement Fund except as provided in the Stipulation, by an order of the Court, or with the written agreement of Lead Counsel and Defendants' Counsel.

2.5 Subject to further order(s) and/or directions as may be made by the Court, the Escrow Agent is authorized to execute such transactions as are consistent with the terms of the Stipulation. Released Parties shall have no responsibility for, interest in, or liability whatsoever with respect to the actions of the Escrow Agent, or any transaction executed by the Escrow Agent.

2.6 All funds held by the Escrow Agent shall be deemed and considered to be in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as such funds shall be distributed pursuant to the Stipulation and/or further order(s) of the Court.

2.7 Notwithstanding the fact that the Effective Date has not yet occurred, Lead Counsel may pay from the Settlement Fund the costs and expenses reasonably and actually incurred up to \$250,000 expenditures for which will be non-returnable and apportioned amongst the respective Settling Defendants in the same percentage as each Settling Defendants' contribution to the Settlement Amount, in connection with providing notice to the Settlement Class, locating Settlement Class Members, and processing Proofs of Claim. Such notice and administration costs shall be allocated among all Settling Defendants based pro rata upon each Settling Defendants' settlement contribution. In the event that the Settlement does not become Final, any money paid or incurred for the purposes set forth in this paragraph shall not be returned or repaid to Settling Defendants or their insurers. Subject to ¶5.9 below, Settling Defendants are not responsible for, and shall not be liable for, any costs in connection with providing notice to the Settlement Class, locating Settlement Class Members, administering and distributing the Settlement Fund, or processing Proofs of Claim or any other fees, costs or expenses of administering the Settlement. After the Effective Date, Lead Counsel may pay from the Settlement Fund any notice and administration costs and/or expenses without further order of the Court or approval of Settling Defendants.

**c. Taxes**

2.8 (a) The Settling Parties and the Escrow Agent agree to treat the Settlement Fund as being at all times a “qualified settlement fund” within the meaning of Treas. Reg. §1.468B-1. In addition, the Escrow Agent shall timely make such elections as necessary or advisable to carry out the provisions of this ¶2.8, including the “relation-back election” (as defined in Treas. Reg. §1.468B-1(j)(2)) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the Escrow Agent to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur.

(b) For the purpose of I.R.C. §1.468B and the regulations promulgated thereunder, the “administrator” shall be the Escrow Agent. Lead Counsel shall timely and properly file all informational and other tax returns necessary or advisable with respect to the Settlement Fund (including, without limitation, the returns described in Treas. Reg. §1.468B-2(k)). Such returns (as well as the election described in ¶2.8(a) hereof) shall be consistent with this ¶2.8 and in all events shall reflect that all Taxes (including any estimated Taxes, interest, or penalties) on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided in ¶2.8(c) hereof. Released Parties shall have no responsibility or liability for the Settlement Fund’s tax returns or other filings.

(c) All (a) Taxes (including any estimated Taxes, interest, or penalties) arising with respect to the income earned by the Settlement Fund, including any Taxes or tax detriments that may be imposed upon Released Parties or their counsel with respect to

any income earned by the Settlement Fund for any period during which the Settlement Fund does not qualify as a “qualified settlement fund” for federal or state income tax purposes, and (b) expenses and costs incurred in connection with the operation and implementation of this ¶2.8 (including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) the returns described in ¶2.8) (“Tax Expenses”), shall be paid out of the Settlement Fund; in all events Released Parties, the parties hereto, and their counsel shall have no liability or responsibility for Taxes or Tax Expenses. Further, Taxes and Tax Expenses shall be treated as, and considered to be, a cost of administration of the Settlement Fund and shall be timely paid by the Escrow Agent out of the Settlement Fund without prior order from the Court and the Escrow Agent shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to Authorized Claimants any funds necessary to pay such amounts, including the establishment of adequate reserves for any Taxes and Tax Expenses (as well as any amounts that may be required to be withheld under Treas. Reg. §1.468B-2(1)(2)); neither Released Parties nor their counsel are responsible nor shall they have any liability for any Taxes or Tax Expenses. The parties hereto agree to cooperate with the Escrow Agent, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this ¶2.8.

(d) The Settlement Class Members who receive any portion of the Settlement Amount shall be solely responsible for any federal, state or local taxes due on the amounts they received. Notwithstanding anything else in this Stipulation, none of



Settling Defendants shall be required to pay any federal, state or local taxes arising out of or relating to any distribution from the Settlement Fund.

**d. Termination of Settlement**

2.9 In the event that the Stipulation is not approved or the Stipulation is terminated, canceled, or fails to become effective for any reason, the Settlement Fund less Notice and Administration Expenses or Taxes or Tax Expenses paid, incurred, or due and owing pursuant to ¶2.7 and ¶2.8 hereof in connection with the Settlement provided for herein, shall be refunded pursuant to written instructions from counsel to Defendants in accordance with ¶7.4 herein.

**3. Preliminary Approval Order and Settlement Hearing**

3.1 Promptly after execution of the Stipulation, Lead Counsel shall submit the Stipulation together with its Exhibits to the Court and shall apply for entry of an order (“Preliminary Approval Order”), substantially in the form of Exhibit A attached hereto, requesting, among other things, the preliminary approval of the Settlement set forth in the Stipulation and approval of the forms and manner of providing notice to the Settlement Class.

3.2 Lead Counsel shall request that after notice is given, the Court hold the Settlement Hearing and approve the settlement of the Litigation between Plaintiffs and Defendants, as set forth herein. At or after the Settlement Hearing, Lead Counsel also will request that the Court approve expenses for funding litigation efforts to date.

#### **4. Releases**

4.1 Upon the Effective Date, Plaintiffs shall, and each of the Settlement Class Members shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims, whether or not such Settlement Class Member executes and delivers the Proof of Claim or shares in the Settlement Fund. Claims to enforce the terms of this Stipulation are not released.

4.2 By entering into this Stipulation, Plaintiffs represent and warrant that they have not assigned, hypothecated, conveyed, transferred, or otherwise granted or given, in whole or in part, any interest in the Released Claims, or any of them, to any other Person.

4.3 The Proof of Claim to be executed by Settlement Class Members shall release all Released Claims against Released Parties.

4.4 Upon the Effective Date, all Settlement Class Members and anyone claiming through or on behalf of any of them, will be forever barred and enjoined from commencing, instituting, prosecuting, or continuing to prosecute any action or other proceeding in any court of law or equity, arbitration tribunal, or administrative forum, asserting the Released Claims against any of the Released Parties.

4.5 Upon the Effective Date, each of the Released Defendant Parties shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Defendants' Claims against Plaintiffs, the Settlement Class, and Plaintiffs' Counsel. Claims to enforce the terms of this Stipulation and the Settlement are not released.

**5. Administration and Calculation of Claims, Final Awards and Supervision and Distribution of the Settlement Fund**

5.1 The Claims Administrator, subject to such supervision and direction of Lead Counsel, and as may be necessary or as circumstances may require, the Court, shall administer and calculate the Claims submitted by Settlement Class Members and shall oversee distribution of the Net Settlement Fund to Authorized Claimants.

5.2 The Settlement Fund shall be applied as follows:

(a) to pay all Notice and Administration Expenses;

(b) to pay the Taxes and Tax Expenses described in ¶2.8 hereof;

(c) to pay attorneys' fees and expenses to Lead Counsel ("Fee and Expense Award"), and to pay awards to Plaintiffs, if and to the extent allowed by the Court;

and

(d) after the Effective Date, to distribute the Net Settlement Fund to Authorized Claimants as allowed by the Stipulation, the Plan of Allocation, or the Court.

5.3 After the Effective Date, and in accordance with the terms of the Stipulation, the Plan of Allocation, or such further approval and further order(s) of the Court as may be necessary or as circumstances may require, the Net Settlement Fund shall be distributed to Authorized Claimants, subject to and in accordance with the following.

5.4 Within the time as shall be set by the Court, each Person claiming to be an Authorized Claimant shall be required to submit to the Claims Administrator a completed Proof of Claim, substantially in the form attached as Exhibit A-2 hereto, signed under penalty of perjury and supported by such documents as are specified therein. Any Person

who submits a Proof of Claim shall reasonably cooperate with the Claims Administrator, including by promptly responding to any inquiry made by the Claims Administrator.

5.5 All Settlement Class Members (except Persons who request exclusion) shall be bound by all determinations and judgments in the Litigation concerning the Settlement, including, without limitation, the releases provided for therein, whether favorable or unfavorable to the Settlement Class, regardless of whether such Persons seek or obtain by any means, including, without limitation, by submitting a Proof of Claim form or any similar document, any distribution from the Settlement Fund or the Net Settlement Fund.

5.6 Lead Counsel shall cause to be provided to Defendants' Counsel copies of all requests for exclusion, and any written revocation of requests for exclusion, as expeditiously as possible and in any event no later than fourteen (14) days prior to the Settlement Hearing.

5.7 Except as otherwise ordered by the Court, all Settlement Class Members who fail to timely submit a valid Proof of Claim within such period, or such other period as may be ordered by the Court, or otherwise allowed, shall be forever barred from receiving any payments pursuant to the Stipulation and the Settlement set forth herein, but will in all other respects be subject to and bound by the provisions of this Stipulation, the releases contained herein, and the Judgment, and will be barred from bringing any action against the Released Parties concerning the Released Claims. Notwithstanding the foregoing, Lead Counsel shall have the discretion (but not the obligation) to accept late-submitted claims for processing by the Claims Administrator so long as distribution of the Net Settlement Fund to Authorized Claimants is not materially delayed thereby. No Person shall have any

claim against Plaintiffs, Lead Counsel, the Claims Administrator, or any Settlement Class Member by reason of the exercise or non-exercise of such discretion.

5.8 The Net Settlement Fund shall be distributed to the Authorized Claimants substantially in accordance with the Plan of Allocation to be approved by the Court. If there is any balance remaining in the Net Settlement Fund after a reasonable period of time after the date of the initial distribution of the Net Settlement Fund, Lead Counsel shall, if feasible, reallocate (which reallocation may occur on multiple occasions) such balance among Authorized Claimants, who cash their initial distribution payment and who would receive a distribution of at least \$10.00, in an equitable and economic fashion. Thereafter, any *de minimis* balance which still remains in the Net Settlement Fund shall be donated to the Tennessee Bar Foundation.

5.9 This Settlement is non-recapture, *i.e.*, is not a claims-made settlement and, if all conditions of the Stipulation are satisfied and the Settlement becomes Final, no portion of the Settlement Fund will be returned to Defendants. Released Defendant Parties shall have no responsibility for, interest in, or liability whatsoever with respect to the distribution of the Net Settlement Fund, the Plan of Allocation, the determination, administration, or calculation of claims, the payment or withholding of Taxes or Tax Expenses, or any losses incurred in connection therewith. No Person shall have any claim of any kind against Released Defendant Parties with respect to the matters set forth in ¶¶5.1-5.8 hereof; and Settlement Class Members, Plaintiffs, and Lead Counsel release Released Defendant Parties from any and all liability and claims arising from or with respect to the administration, investment, or distribution of the Settlement Fund.

5.10 No Person shall have any claim against Plaintiffs, Lead Counsel, Defendants, Released Defendant Parties, the Claims Administrator or other entity designated by Lead Counsel based on distributions made substantially in accordance with the Stipulation and the Settlement contained herein, the Plan of Allocation, or further order(s) of the Court. This does not include any claim by any party for breach of this Stipulation.

5.11 It is understood and agreed by the Settling Parties that any proposed Plan of Allocation of the Net Settlement Fund, including, without limitation, any adjustments to an Authorized Claimant's Claim set forth therein, is not a part of this Stipulation and is to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement set forth in this Stipulation, and any order or proceeding relating to the Plan of Allocation shall not operate to terminate or cancel this Stipulation or affect or delay the finality of the Court's Judgment approving this Stipulation and the Settlement set forth herein (including the releases contained herein), or any other orders entered pursuant to this Stipulation.

## **6. Plaintiffs' Counsel's Attorneys' Fees and Expenses**

6.1 Lead Counsel may submit an application or applications for: (a) an award of attorneys' fees; plus (b) expenses or charges in connection with prosecuting the Litigation; plus (c) any interest on such attorneys' fees and expenses at the same rate and for the same periods as earned by the Settlement Fund (until paid) as may be awarded by the Court. Lead Counsel reserves the right to make additional applications for fees and expenses incurred.

6.2 The fees and expenses, as awarded by the Court, shall be paid to Lead Counsel from the Settlement Fund, as ordered, immediately after the Court executes the Judgment and an order awarding such fees and expenses. Lead Counsel may thereafter allocate the attorneys' fees among Plaintiffs' Counsel in a manner in which it in good faith believes reflects the contributions of such counsel to the initiation, prosecution, and resolution of the Litigation.

6.3 In the event that the Effective Date does not occur, or the Judgment or the order making the Fee and Expense Award is reversed or modified, or the Stipulation is canceled or terminated for any other reason, and such reversal, modification, cancellation or termination becomes Final and not subject to review, and in the event that the Fee and Expense Award has been paid to any extent, then Plaintiffs' Counsel who received any portion of the Fee and Expense Award shall be obligated, within fifteen (15) business days from receiving notice from any of Defendants' Counsel or from any court of appropriate jurisdiction, refund to the Settlement Fund such fees and expenses previously paid to them from the Settlement Fund plus interest thereon at the same rate as earned on the Settlement Fund in an amount consistent with such reversal or modification. Each such Plaintiffs' Counsel's law firm receiving fees and expenses, as a condition of receiving the Fee and Expense Award, on behalf of itself and each partner and/or shareholder of it, agrees that the law firm and its partners and/or shareholders are subject to the jurisdiction of the Court for the purpose of enforcing this provision, and are jointly and severally liable and responsible for any required repayment.

6.4 The procedure for and the allowance or disallowance by the Court of any applications by counsel for the Plaintiffs for attorneys' fees and expenses, including the fees of experts and consultants, to be paid out of the Settlement Fund, are not part of the Settlement set forth in this Stipulation, and are to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement set forth in this Stipulation, and any order or proceeding relating to the Fee and Expense Application, or any appeal from any order relating thereto or reversal or modification thereof, shall not operate to terminate or cancel this Stipulation, or affect or delay the finality of the Judgment approving the Stipulation and the Settlement of the Litigation set forth herein (including, without limitation, the releases contained herein).

6.5 Any attorneys' fees and/or expenses awarded by the Court shall be paid solely from the Settlement Fund. Released Defendant Parties shall have no responsibility for any payment of attorneys' fees and/or expenses (including Taxes) to Plaintiffs' Counsel or Plaintiffs.

## **7. Conditions of Settlement, Effect of Disapproval, Cancellation, or Termination**

7.1 The Effective Date of the Stipulation shall be conditioned on the occurrence of all of the following events:

(a) the Court has entered the Preliminary Approval Order, as required by ¶3.1 hereof, substantially in the form set forth in Exhibit A attached hereto;

(b) the Settlement Amount has been deposited into the Escrow Account;



(c) Settling Defendants have not exercised their option to terminate the Stipulation pursuant to ¶7.3 hereof;

(d) the Court has entered the Judgment, or a judgment substantially in the form of Exhibit B attached hereto; and

(e) the Judgment has become Final, as defined in ¶1.11 hereof.

7.2 Upon the Effective Date, any and all remaining interests or rights of Defendants or Defendants' insurers in or to the Settlement Fund, if any, shall be absolutely and forever extinguished and the releases herein shall be effective. If the conditions specified in ¶7.1 hereof are not met, then the Stipulation shall be canceled and terminated subject to ¶7.4 hereof unless Lead Counsel and counsel for the Settling Defendants mutually agree in writing to proceed with the Stipulation.

7.3 Only the Settling Defendants possess the option to terminate the Settlement in the event that valid requests for exclusion from the Settlement Class exceed the criteria set forth in the Supplemental Agreement, executed between Plaintiffs and Settling Defendants through their respective counsel, if any, concurrently with this Stipulation. The terms of the Supplemental Agreement shall not be disclosed in any other manner other than the statements herein and in the Notice, or as otherwise provided in the Supplemental Agreement unless and until the Court otherwise directs or a dispute arises between Plaintiffs and Settling Defendants concerning its interpretation or application. If submission of the Supplemental Agreement to the Court is required for resolution of a dispute or is otherwise ordered by the Court, the parties will undertake to have the Court review the Supplemental Agreement *in camera* without filing it on the docket. If the Court

requires that the Supplemental Agreement be filed, the Settling Parties shall request that it be filed under seal, or with the termination threshold redacted.

7.4 Unless otherwise ordered by the Court, in the event the Stipulation is not approved or this Stipulation is terminated, canceled, or the Effective Date otherwise fails to occur, then within fifteen (15) business days after written notification of such event is sent by Defendants' Counsel or Lead Counsel to the Escrow Agent, the Settlement Fund (including accrued interest), less Taxes, Tax Expenses, and Notice and Administration Expenses which have either been disbursed pursuant to ¶¶2.1 and 2.8 hereof, or are chargeable to the Settlement Fund pursuant to ¶¶2.7 and 2.8 hereof, shall be refunded by the Escrow Agent pursuant to written instructions from Defendants' Counsel. The Escrow Agent or its designee shall apply for any tax refund owed on the Settlement Amount and pay the proceeds, after deduction of any fees or expenses incurred in connection with such application(s) for refund, pursuant to written instructions from Defendants' Counsel.

7.5 In the event that the Stipulation is not approved by the Court or the Settlement set forth in the Stipulation is terminated or fails to become effective in accordance with its terms, the Settling Parties shall set a conference with the Court to discuss next steps. In such event, the terms and provisions of the Stipulation, with the exception of ¶¶1.1-1.38, 2.6-2.9, 6.3-6.5, 7.4-7.6, 8.6-8.7 hereof, shall have no further force and effect with respect to the Settling Parties and shall not be used in this Litigation or in any other proceeding for any purpose, and any judgment or order entered by the Court in accordance with the terms of the Stipulation shall be treated as vacated, *nunc pro tunc*. No order of the Court or modification or reversal on appeal of any order of the Court concerning the Plan of

Allocation or the amount of any attorneys' fees, costs, expenses, and interest awarded by the Court to any of Plaintiffs' Counsel or expenses to the Plaintiffs shall operate to terminate or cancel this Stipulation or constitute grounds for cancellation or termination of the Stipulation.

7.6 If the Effective Date does not occur, or if the Stipulation is terminated pursuant to its terms, neither Plaintiffs nor any of their counsel shall have any obligation to repay any amounts disbursed pursuant to ¶¶2.7 or 2.8. In addition, any expenses already incurred pursuant to ¶¶2.7 or 2.8 hereof at the time of such termination or cancellation but which have not been paid, shall be paid by the Escrow Agent in accordance with the terms of the Stipulation prior to the balance being refunded in accordance with ¶¶2.9 and 7.4 hereof.

7.7 Each Settling Defendant warrants and represents that it is not "insolvent" within the meaning of 11 U.S.C. §101(32) as of the time the Stipulation is executed. This representation is made by each Settling Defendant and not by Defendants' Counsel. In the event of a final order of a court of competent jurisdiction, not subject to any further proceedings, determining the transfer of the Settlement Fund, or any portion thereof, by or on behalf of Settling Defendants to be a voidable preference, voidable transfer, fraudulent transfer, or similar transaction under Title 11 of the United States Code (Bankruptcy), or applicable state law, and any portion thereof is required to be refunded and such amount is not promptly deposited in the Settlement Fund by or on behalf of Settling Defendants, then, at the election of Plaintiffs the Settlement may be terminated and the Judgment entered in favor of Settling Defendants pursuant to the Settlement shall be null and void.

Alternatively, at the election of Plaintiffs, the Settling Parties shall jointly move the Court to vacate and set aside the release given and the Judgment entered in favor of Settling Defendants and that Settling Defendants and Plaintiffs and Settlement Class Members shall set a conference with the Court to discuss next steps, and the Settlement Fund shall be promptly returned.

## **8. Miscellaneous Provisions**

8.1 The Settling Parties (a) acknowledge that it is their intent to consummate this agreement; and (b) agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of the Stipulation and to exercise their best efforts to accomplish the foregoing terms and conditions of the Stipulation.

8.2 The Settling Parties agree that all motions and discovery in this Litigation will be stayed until the Court has granted or denied final approval of the Settlement, except to the extent necessary to facilitate such approval.

8.3 The Settling Parties intend this Settlement to be a final and complete resolution of all disputes between them with respect to the Litigation. The Settlement compromises claims that are contested and shall not be deemed an admission by any Settling Party as to the merits of any claim or defense. The Judgment will contain a finding that, during the course of the Litigation, the parties and their respective counsel at all times complied with the requirements of Tennessee Rule of Civil Procedure 11.02. The Settling Parties agree that the Settlement Amount and the other terms of the Settlement were negotiated in good faith by the Settling Parties, and reflect a settlement that was reached voluntarily after consultation with competent legal counsel and, with respect to certain

Settling Defendants, with the assistance of a neutral third-party mediator, Honorable Christopher H. Steger.

8.4 Plaintiffs and Plaintiffs' Counsel and Defendants and Defendants' Counsel shall not make any accusations of wrongful or actionable conduct by any party concerning the prosecution, defense, and resolution of the Litigation, and shall not otherwise suggest that the Settlement embodied in this Stipulation constitutes an admission of any claim or defense alleged. The Settling Parties reserve their right to rebut, in a manner that such party determines to be appropriate, any contention made in any public forum regarding the Litigation, including that the Litigation was brought or defended in bad faith or without a reasonable basis. Further, the Settling Parties agree that each has complied fully with the strictures of the PSLRA Section 26-1(c) (to the extent applicable), Tennessee Rule of Civil Procedure 11.02, and that the proposed final judgment will contain a statement to reflect this compliance.

8.5 Neither this Stipulation (whether or not consummated) nor the Settlement contained herein, the negotiations leading to the execution of this Stipulation and the Settlement, nor any act performed or document executed pursuant to or in furtherance of the Stipulation or the Settlement: (a) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claim, or of any wrongdoing or liability of Released Defendant Parties, or as a waiver by Released Defendant Parties of any applicable defense, or (b) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of Released Defendant Parties in any civil, criminal, or administrative proceeding in any court, administrative agency, or other

tribunal. Released Defendant Parties may file this Stipulation and/or the Judgment from this action in any other action that may be brought against them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any theory of claim preclusion or issue preclusion or similar defense or counterclaim.

8.6 All agreements made and orders entered during the course of the Litigation relating to the confidentiality of information shall survive this Stipulation.

8.7 Whether or not this Stipulation is approved by the Court and whether or not the Settlement embodied in this Stipulation is consummated, the Settling Parties and their counsel shall use their best efforts to keep all negotiations, discussions, acts performed, agreements, drafts, documents signed and proceedings had in connection with this Stipulation confidential. Notwithstanding the foregoing, the parties agree that this Stipulation may be filed publicly as part of any motion for preliminary or final approval of the Settlement.

8.8 All of the Exhibits to the Stipulation are material and integral parts hereof and are fully incorporated herein by this reference. Notwithstanding the foregoing, in the event that there exists a conflict or inconsistency between the terms of this Stipulation and the terms of any Exhibit attached hereto or other document incorporated by reference herein, the terms of this Stipulation shall prevail.

8.9 This Stipulation, along with its Exhibits, may be amended or modified only by a written instrument signed by or on behalf of all Settling Parties or their respective successors-in-interest.

8.10 The waiver by any party of any breach of this Stipulation by any other party shall not be deemed a waiver of any other prior or subsequent breach of this Stipulation or a waiver by any party other than the waiving party.

8.11 The Stipulation and the Exhibits attached hereto constitute the entire agreement among the parties hereto and no representations, warranties, or inducements have been made to any party concerning the Stipulation or its Exhibits other than the representations, warranties, and covenants contained and memorialized in such documents. Except as otherwise provided herein, each party shall bear its own attorneys' fees and costs.

8.12 Lead Counsel, on behalf of the Settlement Class, is expressly authorized by the Plaintiffs to take all appropriate action required or permitted to be taken by the Settlement Class pursuant to the Stipulation to effectuate its terms and also is expressly authorized to enter into any modifications or amendments to the Stipulation on behalf of the Settlement Class that it deems appropriate.

8.13 Each counsel or other Person executing the Stipulation or any of its Exhibits on behalf of any party hereto hereby warrants that such Person has the full authority to do so.

8.14 The Stipulation may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. A complete set of executed counterparts shall be filed with the Court. Signatures sent by facsimile or via e-mail in .pdf format shall be deemed originals.

8.15 The Stipulation shall be binding upon, and inure to the benefit of, the successors and assigns of the parties hereto. No assignment shall relieve any party hereto of obligations hereunder.

8.16 The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of the Stipulation, and all Settling Parties submit to the jurisdiction of the Court for purposes of implementing and enforcing the Settlement embodied in the Stipulation and matters related to the Settlement. Any such actions, motions, or disputes arising under or to enforce this Stipulation or any portion thereof shall be commenced and maintained only in this Court.

8.17 Pending approval of the Court of the Stipulation and its Exhibits, all proceedings in this Litigation relating to Defendants shall be stayed and all Settlement Class Members shall be barred and enjoined from prosecuting any of the Released Claims against any of the Released Parties.

8.18 This Stipulation and the Exhibits hereto shall be considered to have been negotiated, executed, and delivered, and to be wholly performed, in the State of Tennessee, and the rights and obligations of the parties to the Stipulation shall be construed and enforced in accordance with, and governed by, the internal, substantive laws of the State of Tennessee without giving effect to that state's choice-of-law principles. This Stipulation shall not be construed more strictly against one party than another merely by virtue of the fact that it, or any part of it, may have been prepared by counsel for one of the parties, it being recognized that it is the result of arm's-length negotiations between all parties and



that all parties have contributed substantially and materially to the preparation of this Stipulation.

8.19 It is a material part of Settling Defendants' participation in the Settlement that they obtain the fullest possible release from further liability to anyone relating to the Released Claims, as set forth below, and it is the intention of the Settling Parties that the Settlement eliminate all further risk and liability of Settling Defendants relating to Released Claims. Accordingly, if the Settlement embodied in this Stipulation is approved by the Court, Lead Counsel and Defendants' Counsel shall request that the Court enter a Judgment, substantially in the form annexed hereto as Exhibit B, which shall, among other things, contain a provision providing for a Bar Order in the Litigation, as follows: Upon the Effective Date, any and all Persons are permanently barred and enjoined, to the fullest extent permitted by law, from commencing, prosecuting, or asserting any and all claims for contribution or indemnity (or any other claim where the alleged injury to that Person is that Person's actual or threatened liability to the Settlement Class or a Settlement Class Member in the Litigation), whether contractual or otherwise, arising out of, based upon, relating to, concerning, or in connection with the Released Claims or the Litigation, against each and every one of the Released Parties, whether arising under state, federal, local, common, or foreign law, as claims, cross-claims, counterclaims, or third-party claims, in the Litigation or any separate action, in this Court or in any other court, arbitration proceeding, administrative proceeding, or other forum; and the Released Defendant Parties are permanently barred and enjoined, to the fullest extent permitted by law, from commencing, prosecuting, or asserting any and all claims for contribution or indemnity (or

any other claim where the alleged injury to the Released Defendant Party is that Released Defendant Party's actual or threatened liability to the Settlement Class or a Settlement Class Member in the Litigation), whether contractual or otherwise, arising out of, based upon, relating to, concerning, or in connection with the Released Claims or the Litigation, whether arising under state, federal, local, common, or foreign law, as claims, cross-claims, counterclaims, or third-party claims, in the Litigation or any separate action, in this Court or in any other court, arbitration proceeding, administrative proceeding, or other forum. Notwithstanding the foregoing, nothing herein shall bar any action by any of the Settling Parties to enforce or effectuate the terms of the Stipulation, the Settlement, or the Judgment.

8.20 The bar order in the form set forth in ¶8.19 is a material part of this Settlement. Settling Defendants shall have the right to terminate this Stipulation and the Settlement if the Judgment is not entered by the Court with a bar order consistent with the language set forth in ¶8.19.


8.21 In accordance with applicable law, any final verdict or judgment obtained by or on behalf of the Plaintiffs against any Defendant other than the Settling Defendant relating to the Released Claims, will be reduced by an amount to be determined by the Court based on the Settlement and associated bar order set for in ¶8.19. The Settlement

shall remain binding on the Settling Parties regardless of the Court's determination of a judgment reduction for non-settling Defendants, if any.

**IN WITNESS WHEREOF**, the Settling Parties have caused this Stipulation to be executed, by their duly authorized attorneys, on January 6, 2023.

ROBBINS GELLER RUDMAN  
& DOWD LLP  
JACK REISE (*pro hac vice*)  
STEPHEN R. ASTLEY (*pro hac vice*)  
BAILIE L. HEIKKINEN (*pro hac vice*)

EGERTON, MCAFEE, ARMISTEAD  
& DAVIS P.C.  
RONALD T. HILL



---

STEPHEN R. ASTLEY  
225 NE Mizner Boulevard, Suite 720  
Boca Raton, FL 33432  
Telephone: 561/750-3000  
561/750-3364 (fax)

---

RONALD T. HILL  
P.O. Box 2047  
Knoxville, TN 37901  
Telephone: 865/546-0500  
865/525-5293 (fax)

ROBBINS GELLER RUDMAN  
& DOWD LLP  
CHRISTOPHER M. WOOD, #032977  
414 Union Street, Suite 900  
Nashville, TN 37219  
Telephone: 615/244-2203  
615/252-3798 (fax)

*Attorney for Defendants Northland  
Capital Markets, Dominick & Dominick,  
LLC (n/k/a Dominick & Dickerman  
LLC), and I-Bankers Securities, Inc.*

ROBBINS GELLER RUDMAN  
& DOWD LLP  
ELLEN GUSIKOFF STEWART  
(*pro hac vice*)  
655 West Broadway, Suite 1900  
San Diego, CA 92101-8498  
Telephone: 619/231-1058  
619/231-7423 (fax)

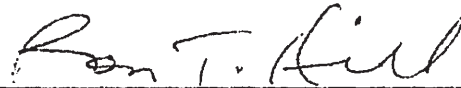
*Lead Counsel for Plaintiffs*

shall remain binding on the Settling Parties regardless of the Court's determination of a judgment reduction for non-settling Defendants, if any.

**IN WITNESS WHEREOF**, the Settling Parties have caused this Stipulation to be executed, by their duly authorized attorneys, on January 6, 2023.

ROBBINS GELLER RUDMAN  
& DOWD LLP  
JACK REISE (*pro hac vice*)  
STEPHEN R. ASTLEY (*pro hac vice*)  
BAILIE L. HEIKKINEN (*pro hac vice*)

EGERTON, MCAFFEE, ARMISTEAD  
& DAVIS P.C.  
RONALD T. HILL



---

STEPHEN R. ASTLEY  
120 East Palmetto Park Road, Suite 500  
Boca Raton, FL 33432  
Telephone: 561/750-3000  
561/750-3364 (fax)

---

RONALD T. HILL  
P.O. Box 2047  
Knoxville, TN 37901  
Telephone: 865/546-0500  
865/525-5293 (fax)

ROBBINS GELLER RUDMAN  
& DOWD LLP  
CHRISTOPHER M. WOOD, #032977  
414 Union Street, Suite 900  
Nashville, TN 37219  
Telephone: 615/244-2203  
615/252-3798 (fax)

*Attorney for Defendants Northland  
Capital Markets, Dominick & Dominick,  
LLC (n/k/a Dominick & Dickerman  
LLC), and I-Bankers Securities, Inc.*

ROBBINS GELLER RUDMAN  
& DOWD LLP  
ELLEN GUSIKOFF STEWART  
(*pro hac vice*)  
655 West Broadway, Suite 1900  
San Diego, CA 92101-8498  
Telephone: 619/231-1058  
619/231-7423 (fax)

*Lead Counsel for Plaintiffs*

BARRETT JOHNSTON MARTIN  
& GARRISON, LLC  
DOUGLAS S. JOHNSTON, JR., #5782  
JERRY E. MARTIN, #20193  
Bank of America Plaza  
414 Union Street, Suite 900  
Nashville, TN 37219  
Telephone: 615/244-2202  
615/252-3798 (fax)

*Local Counsel for Plaintiffs*

LAW OFFICES OF CURTIS V.  
TRINKO  
CURTIS V. TRINKO  
39 Sintsink Drive West, 1st Floor  
Port Washington, NY 11050  
Telephone: 212/490-9550  
212/986-0158 (fax)

*Additional Counsel for Plaintiffs*


RITCHIE, DAVIES, JOHNSON  
& STOVALL, P.C.  
WAYNE A. RITCHIE II  
JAMES R. STOVALL

---

JAMES R. STOVALL  
606 West Main Street, Suite 300  
Knoxville, TN 37902  
war@rdjs.law  
jstovall@rdjs.law

*Attorneys for Defendant Aegis Capital Corp.*

FRANTZ, MCCONNELL &  
SEYMOUR, LLP  
JAMES E. WAGNER

  
JAMES E. WAGNER  
550 West Main Street, Suite 500  
Knoxville, TN 37902  
Telephone: 865/546-9321  
865/637-5249 (fax)

BAKER & MCKENZIE LLP  
EDWARD D. TOTINO  
PERRIE M. WEINER  
1901 Avenue of the Stars, Suite 950  
Los Angeles, CA 90067  
Telephone: 310/201-4728  
310/201-4721 (fax)

*Attorneys for Defendant Ladenburg  
Thalman & Co. Inc. (not a Ladenburg  
Thalman Financial Services Inc.)*

KENNERLY, MONTGOMERY &  
FINLEY, P.C.  
E. RICHARDS BRABHAM, III

---

E. RICHARDS BRABHAM, III  
550 Main Street  
First Floor, Bank of America Center  
Knoxville, TN 37902  
rbrabham@kmfpc.com

*Attorney for Defendant Maxim Group,  
LLC*

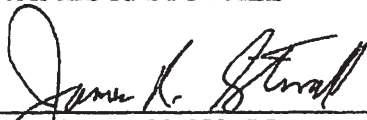
BARRETT JOHNSTON MARTIN  
& GARRISON, LLC  
DOUGLAS S. JOHNSTON, JR., #5782  
JERRY E. MARTIN, #20193  
Bank of America Plaza  
414 Union Street, Suite 900  
Nashville, TN 37219  
Telephone: 615/244-2202  
615/252-3798 (fax)

*Local Counsel for Plaintiffs*

LAW OFFICES OF CURTIS V.  
TRINKO  
CURTIS V. TRINKO  
39 Sintsink Drive West, 1st Floor  
Port Washington, NY 11050  
Telephone: 212/490-9550  
212/986-0158 (fax)

*Additional Counsel for Plaintiffs*

RITCHIE, DAVIES, JOHNSON  
& STOVALL, P.C.  
WAYNE A. RITCHIE II  
JAMES R. STOVALL



---

JAMES R. STOVALL  
606 West Main Street, Suite 300  
Knoxville, TN 37902  
war@rdjs.law  
jstovall@rdjs.law

*Attorneys for Defendant Aegis Capital Corp.*

FRANTZ, MCCONNELL &  
SEYMOUR, LLP  
JAMES E. WAGNER

---

JAMES E. WAGNER  
550 West Main Street, Suite 500  
Knoxville, TN 37902  
Telephone: 865/546-9321  
865/637-5249 (fax)

BAKER & MCKENZIE LLP  
EDWARD D. TOTINO  
PERRIE M. WEINER  
1901 Avenue of the Stars, Suite 950  
Los Angeles, CA 90067  
Telephone: 310/201-4728  
310/201-4721 (fax)

*Attorneys for Defendant Ladenburg  
Thalmann & Co. Inc. (n/k/a Ladenburg  
Thalmann Financial Services Inc.)*

KENNERLY, MONTGOMERY &  
FINLEY, P.C.  
E. RICHARDS BRABHAM, III

---

E. RICHARDS BRABHAM, III  
550 Main Street  
First Floor, Bank of America Center  
Knoxville, TN 37902  
rbrabham@kmfpc.com

*Attorney for Defendant Maxim Group,  
LLC*

BARRETT JOHNSTON MARTIN  
& GARRISON, LLC  
DOUGLAS S. JOHNSTON, JR., #5782  
JERRY E. MARTIN, #20193  
Bank of America Plaza  
414 Union Street, Suite 900  
Nashville, TN 37219  
Telephone: 615/244-2202  
615/252-3798 (fax)

*Local Counsel for Plaintiffs*

LAW OFFICES OF CURTIS V.  
TRINKO  
CURTIS V. TRINKO  
39 Sintsink Drive West, 1st Floor  
Port Washington, NY 11050  
Telephone: 212/490-9550  
212/986-0158 (fax)

*Additional Counsel for Plaintiffs*

RITCHIE, DAVIES, JOHNSON  
& STOVALL, P.C.  
WAYNE A. RITCHIE II  
JAMES R. STOVALL

---

JAMES R. STOVALL  
606 West Main Street, Suite 300  
Knoxville, TN 37902  
war@rdjs.law  
jstovall@rdjs.law

*Attorneys for Defendant Aegis Capital Corp.*

FRANTZ, MCCONNELL &  
SEYMOUR, LLP  
JAMES E. WAGNER

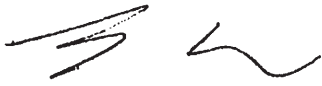
---

JAMES E. WAGNER  
550 West Main Street, Suite 500  
Knoxville, TN 37902  
Telephone: 865/546-9321  
865/637-5249 (fax)

BAKER & MCKENZIE LLP  
EDWARD D. TOTINO  
PERRIE M. WEINER  
1901 Avenue of the Stars, Suite 950  
Los Angeles, CA 90067  
Telephone: 310/201-4728  
310/201-4721 (fax)

*Attorneys for Defendant Ladenburg  
Thalmann & Co. Inc. (n/k/a Ladenburg  
Thalmann Financial Services Inc.)*

KENNERLY, MONTGOMERY &  
FINLEY, P.C.  
E. RICHARDS BRABHAM, III



---

E. RICHARDS BRABHAM, III  
550 Main Street  
First Floor, Bank of America Center  
Knoxville, TN 37902  
rbrabham@kmfpc.com

*Attorney for Defendant Maxim Group, LLC*



BAKER, DONELSON, BEARMAN,  
CALDWELL & BERKOWITZ  
NICHOLAS W. DIEGEL (BPR No.  
034211\_



---

NICHOLAS W. DIEGEL  
265 Brookview Centre Way  
Suite 600  
Knoxville, TN 37919  
Telephone: 865/549-7000  
ndiegel@bakerdonelson.com

WILKIE FARR & GALLAGHER LLP  
JEFFREY B. KORN (*pro hac vice*)  
SAMEER ADVANI

---

JEFFREY B. KORN  
787 Seventh Avenue  
New York, NY 10019  
Telephone: 212/728-8000  
jkorn@wilkie.com  
sadvani@wilkie.com

*Attorneys for Defendants MLV & Co.  
LLC and National Securities  
Corporation*

MARCUM & PETROFF, P.C.  
STEPHEN A. MARCUM

LEIBOWITZ LAW FIRM, PLLC  
LAWRENCE P. LEIBOWITZ  
BRANDON J. TINDELL

---

STEPHEN A. MARCUM  
3 Courthouse Square  
P.O. Box 240  
Huntsville, TN 37756  
Telephone: 423/663-9755  
423/663-2111 (fax)

*Attorney for Defendants Deloy Miller  
and William B. Richardson*

---

LAWRENCE P. LEIBOWITZ  
608 South Gay Street, Suite 200  
Knoxville, TN 37902-1637  
Telephone: 865/637-1809  
865/637-9276 (fax)

*Attorneys for Defendants Don A.  
Turkleson, Bob G. Gower, Joseph T.  
Leary, and Marceau N. Schlumberger*



BAKER, DONELSON, BEARMAN,  
CALDWELL & BERKOWITZ  
NICHOLAS W. DIEGEL (BPR No.  
034211\_

---

NICHOLAS W. DIEGEL  
265 Brookview Centre Way  
Suite 600  
Knoxville, TN 37919  
Telephone: 865/549-7000  
ndiegel@bakerdonelson.com

WILKIE FARR & GALLAGHER LLP  
JEFFREY B. KORN (*pro hac vice*)  
SAMEER ADVANI

---



JEFFREY B. KORN  
787 Seventh Avenue  
New York, NY 10019  
Telephone: 212/728-8000  
jkorn@wilkie.com  
sadvani@wilkie.com

*Attorneys for Defendants MLV & Co.  
LLC and National Securities  
Corporation*

MARCUM & PETROFF, P.C.  
STEPHEN A. MARCUM

LEIBOWITZ LAW FIRM, PLLC  
LAWRENCE P. LEIBOWITZ  
BRANDON J. TINDELL

---

STEPHEN A. MARCUM  
3 Courthouse Square  
P.O. Box 240  
Huntsville, TN 37756  
Telephone: 423/663-9755  
423/663-2111 (fax)

*Attorney for Defendants Deloy Miller  
and William B. Richardson*

---

LAWRENCE P. LEIBOWITZ  
608 South Gay Street, Suite 200  
Knoxville, TN 37902-1637  
Telephone: 865/637-1809  
865/637-9276 (fax)

*Attorneys for Defendants Don A.  
Turkleson, Bob G. Gower, Joseph T.  
Leary, and Marceau N. Schlumberger*

BAKER, DONELSON, BEARMAN,  
CALDWELL & BERKOWITZ  
NICHOLAS W. DIEGEL (BPR No.  
034211\_

---

NICHOLAS W. DIEGEL  
265 Brookview Centre Way  
Suite 600  
Knoxville, TN 37919  
Telephone: 865/549-7000  
ndiegel@bakerdonelson.com

WILKIE FARR & GALLAGHER LLP  
JEFFREY B. KORN (*pro hac vice*)  
SAMEER ADVANI

---

JEFFREY B. KORN  
787 Seventh Avenue  
New York, NY 10019  
Telephone: 212/728-8000  
jkorn@wilkie.com  
sadvani@wilkie.com

*Attorneys for Defendants MLV & Co.  
LLC and National Securities  
Corporation*

MARCUM & PETROFF, P.C.  
STEPHEN A. MARCUM

---

STEPHEN A. MARCUM  
3 Courthouse Square  
P.O. Box 240  
Huntsville, TN 37756  
Telephone: 423/663-9755  
423/663-2111 (fax)

*Attorney for Defendants Deloy Miller  
and William B. Richardson*

LEIBOWITZ LAW FIRM, PLLC  
LAWRENCE P. LEIBOWITZ  
BRANDON J. TINDELL

---

LAWRENCE P. LEIBOWITZ  
608 South Gay Street, Suite 200  
Knoxville, TN 37902-1637  
Telephone: 865/637-1809  
865/637-9276 (fax)

*Attorneys for Defendants Don A.  
Turkleson, Bob G. Gower, Joseph T.  
Leary, and Marceau N. Schlumberger*

BAKER, DONELSON, BEARMAN,  
CALDWELL & BERKOWITZ  
NICHOLAS W. DIEGEL (BPR No.  
034211\_

---

NICHOLAS W. DIEGEL  
265 Brookview Centre Way  
Suite 600  
Knoxville, TN 37919  
Telephone: 865/549-7000  
ndiegel@bakerdonelson.com

WILKIE FARR & GALLAGHER LLP  
JEFFREY B. KORN (*pro hac vice*)  
SAMEER ADVANI

---

JEFFREY B. KORN  
787 Seventh Avenue  
New York, NY 10019  
Telephone: 212/728-8000  
jkorn@wilkie.com  
sadvani@wilkie.com

*Attorneys for Defendants MLV & Co.  
LLC and National Securities  
Corporation*

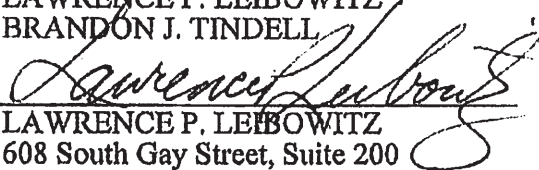
MARCUM & PETROFF, P.C.  
STEPHEN A. MARCUM

---

STEPHEN A. MARCUM  
3 Courthouse Square  
P.O. Box 240  
Huntsville, TN 37756  
Telephone: 423/663-9755  
423/663-2111 (fax)

*Attorney for Defendants Deloy Miller  
and William B. Richardson*

LEIBOWITZ LAW FIRM, PLLC  
LAWRENCE P. LEIBOWITZ  
BRANDON J. TINDELL

  
LAWRENCE P. LEIBOWITZ  
608 South Gay Street, Suite 200  
Knoxville, TN 37902-1637  
Telephone: 865/637-1809  
865/637-9276 (fax)

*Attorneys for Defendants Don A.  
Turkleson, Bob G. Gower, Joseph T.  
Leary, and Marceau N. Schlumberger*

PAINE, TARWATER, and  
BICKERS, LLP  
TAYLOR A. WILLIAMS  
THOMAS H. JARVIS



---

TAYLOR A. WILLIAMS  
900 South Gay Street, Suite 2200  
Knoxville, TN 37902  
Telephone: 865/525-0880  
865/521-7441 (fax)

*Attorneys for Defendant David Voyticky*

TAYLOR & KNIGHT, GP  
JORDAN T. NEWPORT

---

JORDAN T. NEWPORT  
800 South Gay Street, Suite 600  
Knoxville, TN 37929  
Telephone: 865/971-1701  
865/971-1705 (fax)

*Attorney for Defendant Scott Boruff*

---

CHARLES M. STIVERS  
118 Richmond Road  
Manchester, KY 40962

*Pro Se Defendant*

---

DAVID HALL  
48110 David Hall Road  
Kenai, AK 99611

*Pro Se Defendant*

---

CATHERINE RAINEY  
380 Maple Street, Unit 1807  
Gallatin, TN 37066

*Pro Se Defendant*

---

GENERAL MERRILL A. MCPEAK  
USAF (Ret.)  
3550 SW Bond Avenue, # 2204  
Portland, OR 97239

*Pro Se Defendant*

---

GERALD HANNAHS  
17710 Leatha Lane  
Little Rock, AR 72223

*Pro Se Defendant*

PAINÉ, TARWATER, and  
BICKERS, LLP  
TAYLOR A. WILLIAMS  
THOMAS H. JARVIS

---

TAYLOR A. WILLIAMS  
900 South Gay Street, Suite 2200  
Knoxville, TN 37902  
Telephone: 865/525-0880  
865/521-7441 (fax)

*Attorneys for Defendant David Voyticky*

---

CHARLES M. STIVERS  
118 Richmond Road  
Manchester, KY 40962

*Pro Se Defendant*

---

CATHERINE RAINEY  
380 Maple Street, Unit 1807  
Gallatin, TN 37066


*Pro Se Defendant*

---

GERALD HANNAHS  
17710 Leatha Lane  
Little Rock, AR 72223

*Pro Se Defendant*

HAGOOD MOODY HODGE PLC  
JORDAN T. NEWPORT



---

JORDAN T. NEWPORT  
900 South Gay Street, Suite 2100  
Knoxville, TN 37902  
Telephone: 865/525-7313  
865/525-0858 (fax)

*Attorney for Defendant Scott Boruff*

---

DAVID HALL  
48110 David Hall Road  
Kenai, AK 99611

*Pro Se Defendant*

---

GENERAL MERRILL A. MCPEAK  
USAF (Ret.)  
3550 SW Bond Avenue, # 2204  
Portland, OR 97239

*Pro Se Defendant*

PAINE, TARWATER, and  
BICKERS, LLP  
TAYLOR A. WILLIAMS  
THOMAS H. JARVIS

HAGOOD MOODY HODGE PLC  
JORDAN T. NEWPORT

---

TAYLOR A. WILLIAMS  
900 South Gay Street, Suite 2200  
Knoxville, TN 37902  
Telephone: 865/525-0880  
865/521-7441 (fax)

*Attorneys for Defendant David Voyticky*

---

JORDAN T. NEWPORT  
900 South Gay Street, Suite 2100  
Knoxville, TN 37902  
Telephone: 865/525-7313  
865/525-0858 (fax)


*Attorney for Defendant Scott Boruff*

---

CHARLES M. STIVERS  
118 Richmond Road  
Manchester, KY 40962

*Pro Se Defendant*

---

  
DAVID HALL  
48110 David Hall Road  
Kenai, AK 99611

*Pro Se Defendant*

---

CATHERINE RAINEY  
380 Maple Street, Unit 1807  
Gallatin, TN 37066

*Pro Se Defendant*

---

GENERAL MERRILL A. MCPEAK  
USAF (Ret.)  
3550 SW Bond Avenue, # 2204  
Portland, OR 97239

*Pro Se Defendant*

---

GERALD HANNAHS  
17710 Leatha Lane  
Little Rock, AR 72223

*Pro Se Defendant*

PAINÉ, TARWATER, and  
BICKERS, LLP  
TAYLOR A. WILLIAMS  
THOMAS H. JARVIS

TAYLOR & KNIGHT, GP  
JORDAN T. NEWPORT

---

TAYLOR A. WILLIAMS  
900 South Gay Street, Suite 2200  
Knoxville, TN 37902  
Telephone: 865/525-0880  
865/521-7441 (fax)

---

JORDAN T. NEWPORT  
800 South Gay Street, Suite 600  
Knoxville, TN 37929  
Telephone: 865/971-1701  
865/971-1705 (fax)

*Attorneys for Defendant David Voyticky*

*Attorney for Defendant Scott Boruff*

---

CHARLES M. STIVERS  
118 Richmond Road  
Manchester, KY 40962

*Pro Se Defendant*

---

DAVID HALL  
48110 David Hall Road  
Kenai, AK 99611

*Pro Se Defendant*

---

*Catherine Rainey*  
CATHERINE RAINEY  
380 Maple Street, Unit 1807  
Gallatin, TN 37066

*Pro Se Defendant*

---

GENERAL MERRILL A. MCPEAK  
USAF (Ret.)  
3550 SW Bond Avenue, # 2204  
Portland, OR 97239

*Pro Se Defendant*

---

GERALD HANNAHS  
17710 Leatha Lane  
Little Rock, AR 72223

*Pro Se Defendant*

PAINÉ, TARWATER, and  
BICKERS, LLP  
TAYLOR A. WILLIAMS  
THOMAS H. JARVIS

TAYLOR & KNIGHT, GP  
JORDAN T. NEWPORT

---

TAYLOR A. WILLIAMS  
900 South Gay Street, Suite 2200  
Knoxville, TN 37902  
Telephone: 865/525-0880  
865/521-7441 (fax)

*Attorneys for Defendant David Voyticky*

---

JORDAN T. NEWPORT  
800 South Gay Street, Suite 600  
Knoxville, TN 37929  
Telephone: 865/971-1701  
865/971-1705 (fax)

*Attorney for Defendant Scott Boruff*

---

CHARLES M. STIVERS  
118 Richmond Road  
Manchester, KY 40962

*Pro Se Defendant*

---

DAVID HALL  
48110 David Hall Road  
Kenai, AK 99611

*Pro Se Defendant*



---

CATHERINE RAINEY  
380 Maple Street, Unit 1807  
Gallatin, TN 37066

*Pro Se Defendant*

---

GENERAL MERRILL A. MCPEAK  
USAF (Ret.)  
3550 SW Bond Avenue, # 2204  
Portland, OR 97239

*Pro Se Defendant*

---

GERALD HANNAHS  
17710 Leatha Lane  
Little Rock, AR 72223

*Pro Se Defendant*



PAINE, TARWATER, and  
BICKERS, LLP  
TAYLOR A. WILLIAMS  
THOMAS H. JARVIS

TAYLOR & KNIGHT, GP  
JORDAN T. NEWPORT

---

TAYLOR A. WILLIAMS  
900 South Gay Street, Suite 2200  
Knoxville, TN 37902  
Telephone: 865/525-0880  
865/521-7441 (fax)

*Attorneys for Defendant David Voyticky*

---

JORDAN T. NEWPORT  
800 South Gay Street, Suite 600  
Knoxville, TN 37929  
Telephone: 865/971-1701  
865/971-1705 (fax)

*Attorney for Defendant Scott Boruff*

---

CHARLES M. STIVERS  
118 Richmond Road  
Manchester, KY 40962

*Pro Se Defendant*

---

DAVID HALL  
48110 David Hall Road  
Kenai, AK 99611

*Pro Se Defendant*

---

CATHERINE RAINEY  
380 Maple Street, Unit 1807  
Gallatin, TN 37066


*Pro Se Defendant*

---

GENERAL MERRILL A. MCPEAK  
USAF (Ret.)  
3550 SW Bond Avenue, # 2204  
Portland, OR 97239

*Pro Se Defendant*

---

  
GERALD HANNAHS  
17710 Leatha Lane  
Little Rock, AR 72223

*Pro Se Defendant*

**CERTIFICATE OF SERVICE**

I hereby certify that on February 21, 2023, a true and exact copy of the foregoing document has been served via email or First Class Mail to all parties on the attached Service List.

  
STEPHEN R. ASTLEY

## SERVICE LIST

Jack Reise  
Stephen R. Astley  
Bailie L. Heikkinen  
ROBBINS GELLER RUDMAN  
& DOWD LLP  
225 NE Mizner Boulevard, Suite 720  
Boca Raton, FL 33432  
jreise@rgrdlaw.com  
sastley@rgrdlaw.com  
bheikkinen@rgrdlaw.com

Ellen Gusikoff Stewart  
ROBBINS GELLER RUDMAN  
& DOWD LLP  
655 West Broadway, Suite 1900  
San Diego, CA 921010  
elleng@rgrdlaw.com

Curtis V. Trinko  
LAW OFFICES OF CURTIS V. TRINKO  
39 Sintsink Drive West - 1st Floor  
Port Washington, NY 11050  
ctrinko@trinko.com

### *Attorneys for Plaintiffs*

Lawrence P. Leibowitz  
Brandon J. Tindell  
LEIBOWITZ LAW FIRM, PLLC  
608 South Gay Street, Suite 200  
Knoxville, TN 37902-1637  
lpl@leibowitzfirm.com  
bjt@leibowitzfirm.com

*Attorneys for Defendants Don A.  
Turkleson, Bob G. Gower, Joseph T.  
Leary, and Marceau N. Schlumberger*

Christopher M. Wood  
ROBBINS GELLER RUDMAN  
& DOWD LLP  
414 Union Street, Suite 900  
Nashville, TN 37219  
cwood@rgrdlaw.com

Jerry E. Martin  
BARRETT JOHNSTON MARTIN  
& GARRISON, LLC  
Bank of America Plaza  
414 Union Street, Suite 900  
Nashville, TN 37219  
jmartin@barrettjohnston.com

Taylor A. Williams  
Thomas H. Jarvis  
PAINE, TARWATER, and  
BICKERS, LLP  
900 South Gay Street, Suite 2200  
Knoxville, TN 37902  
taw@painetarwater.com  
thj@painetarwater.com

*Attorneys for Defendant David Voyticky*

Stephen A. Marcum  
MARCUM & PETROFF, P.C.  
3 Courthouse Square  
P.O. Box 240  
Huntsville, TN 37756  
smarcum@marcumlaw.net

*Attorney for Defendants Deloy Miller  
and William B. Richardson*

Ronald T. Hill  
EGERTON, MCAFEE, ARMISTEAD  
& DAVIS P.C.  
P.O. Box 2047  
Knoxville, TN 37901  
rhill@emlaw.com

*Attorney for Defendants Northland Capital  
Markets, Dominick & Dominick, LLC  
(n/k/a Dominick & Dickerman LLC), and I-  
Bankers Securities, Inc.*

E. Richards Brabham, III  
KENNERLY, MONTGOMERY &  
FINLEY, P.C.  
550 Main Street  
First Floor, Bank of America Center  
Knoxville, TN 37902  
rbrabham@kmfpc.com

*Attorney for Defendant Maxim Group, LLC*

Wayne A. Ritchie II  
James R. Stovall  
RITCHIE, DAVIES, JOHNSON  
& STOVALL, P.C.  
606 West Main Street, Suite 300  
Knoxville, TN 37902  
war@rdjlaw.com  
jstovall@rdjlaw.com

*Attorneys for Defendant Aegis Capital  
Corp.*

James E. Wagner  
FRANTZ, MCCONNELL & SEYMOUR,  
LLP  
P.O. Box 39  
550 West Main Street, Suite 500  
Knoxville, TN 37901  
jwagner@fmsllp.com

Edward D. Totino  
Perrie M. Weiner  
BAKER & MCKENZIE LLP  
1901 Avenue of the Stars, Suite 950  
Los Angeles, CA 90067  
edward.totino@bakermckenzie.com  
perrie.weiner@bakermckenzie.com

*Attorneys for Defendant Ladenburg  
Thalmann & Co. Inc. (n/k/a Ladenburg  
Thalmann Financial Services Inc.)*

Nicholas W. Diegel  
BAKER, DONELSON, BEARMAN,  
CALDWELL & BERKOWITZ, PC  
265 Brookview Centre Way, Suite 600  
Knoxville, TN 37919  
ndiegel@bakerdonelson.com

Jeffrey B. Korn  
Sameer Advani  
WILKIE FARR & GALLAGHER LLP  
787 Seventh Avenue  
New York, NY 10019  
jkorn@wilkie.com  
sadvani@wilkie.com

*Attorneys for Defendants MLV & Co. LLC  
and National Securities Corporation*

Charles M. Stivers  
118 Richmond Road  
Manchester, KY 40962  
charlesmstivers@hotmail.com

Catherine Rainey  
380 Maple Street, Unit 1807  
Gallatin, TN 37066  
carainey1130@gmail.com

Gerald Hannahs  
17710 Leatha Lane  
Little Rock, AR 72223  
filly@arkansas.net

*Pro Se Defendants*

Jordan T. Newport  
HAGOOD MOODY HODGE PLC  
900 South Gay Street, Suite 2100  
Knoxville, TN 37902  
jnewport@hagoodmoodyhodge.com

*Attorney for Defendant Scott Boruff*

David Hall  
48110 David Hall Road  
Kenai, AK 99611  
d.hallak907@gmail.com

General Merrill A. McPeak  
USAF (Ret.)  
3550 SW Bond Avenue, # 2204  
Portland, OR 97239  
mamcpeak@comcast.net

## **INDEX OF EXHIBITS TO STIPULATION AND AGREEMENT OF SETTLEMENT**

<b>DOCUMENT</b>	<b>EXHIBIT</b>
Proposed Order Preliminarily Approving Settlement Pursuant to Tenn. R. Civ. P. 23.03 and Permitting Notice to the Class	A
Notice of Pendency of Class Action, Proposed Class Action Settlement, and Motion for Attorneys' Fees and Expenses	A-1
Proof of Claim and Release	A-2
Summary Notice of Pendency of Class Action, Proposed Class Action Settlement, and Motion for Attorneys' Fees and Expenses	A-3
[Proposed] Final Judgement and Order of Dismissal with Prejudice	B

# **EXHIBIT A**

IN THE CIRCUIT COURT FOR MORGAN COUNTY  
NINTH JUDICIAL DISTRICT  
THE STATE OF TENNESSEE

MARCIA GOLDBERG, Individually and ) Case No. 2015-CV-33  
on Behalf of All Others Similarly Situated, )  
Plaintiff, ) Judge Pemberton  
vs. )  
DELOY MILLER, et al, )  
Defendants. )

---

KENNETH GAYNOR, Individually and on) Case No. 2015-CV-34  
Behalf of All Others Similarly Situated, )  
Plaintiff, ) Judge Pemberton  
vs. )  
DELOY MILLER, et al, )  
Defendants. )

---

**PROPOSED ORDER PRELIMINARILY APPROVING SETTLEMENT  
PURSUANT TO TENN. R. CIV. P. 23.03 AND PERMITTING NOTICE TO THE  
CLASS**

**EXHIBIT A**



WHEREAS, actions are pending before this Court entitled *Gaynor v. Miller*, No. 2015-CV-34 and *Goldberg v. Miller*, No. 2015-CV-33 in the Circuit Court for Morgan County, Ninth Judicial District in the State of Tennessee (“Litigation”);

WHEREAS, Plaintiffs on behalf of themselves and the proposed Settlement Class having made a motion, pursuant to Tennessee Rule of Civil Procedure 23.05, for an order preliminarily approving the settlement of this Litigation (“Settlement”) with Underwriter Defendants MLV & Co. LLC, National Securities Corporation, Maxim Group, LLC, Aegis Capital Corporation, Northland Capital Markets, Dominick & Dominick, LLC (n/k/a Dominick & Dickerman LLC), Ladenburg Thalmann & Co. Inc., I-Bankers Securities, Inc., and to the extent they have executed the Stipulation and Agreement of Settlement dated January 6, 2023 (the “Stipulation”), Individual Defendants Deloy Miller, Scott M. Boruff, David J. Voyticky, Catherine A. Rector (n/k/a Catherine Rainey), David M. Hall, Merrill A. McPeak, Gerald Hannahs, Charles M. Stivers, Don A. Turkleson, Bob G. Gower, Joseph T. Leary, William B. Richardson, and Marceau N. Schlumberger (“Defendants”), in accordance with the Stipulation, which, together with the Exhibits annexed thereto, sets forth the terms and conditions for a proposed Settlement of the Litigation and for dismissal of the Litigation with prejudice against Defendants, upon the terms and conditions set forth therein; and the Court having read and considered the Stipulation and the Exhibits annexed thereto; and

WHEREAS, unless otherwise defined, all terms used herein have the same meanings as set forth in the Stipulation.

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The Court has reviewed the Stipulation and does hereby preliminarily approve the Settlement set forth therein as fair, reasonable, and adequate, subject to further consideration at the Settlement Hearing described below.

2. Pursuant to Rules 23.01 and 23.02(3) of the Tennessee Rules of Civil Procedure, and for purposes of this Settlement only, the Litigation is hereby preliminarily certified for purposes of the Settlement only, as a class action of all persons or entities who purchased or otherwise acquired Miller Energy's Series C and/or Series D Preferred Stock on or after February 13, 2013, and who were damaged thereby. Excluded from the Settlement Class are all Defendants in these actions and their families, the officers and directors and affiliates of Defendants, at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns, and any entity in which Defendants have or had a controlling interest. Also excluded from the Settlement Class is bankrupt Miller Energy Resources, Inc. and its successors and assigns, including Glacier Oil & Gas Corporation; Williams Financial Group; and Paul W. Boyd.

3. Also excluded from the Settlement Class are those Settlement Class Members who timely and validly request exclusion from the Settlement Class pursuant to the requirements described below.

4. The Court finds, for the purposes of the Settlement only, that the prerequisites for a class action under Rules 23.01 and 23.02(3) of the Tennessee Rules of Civil Procedure have been satisfied in that: (a) the number of Settlement Class Members is so numerous that joinder of all members is impracticable; (b) there are questions of law and fact common to the Settlement Class; (c) the claims of the Plaintiffs are typical of the

claims of the Settlement Class they seeks to represent; (d) Plaintiffs and Lead Counsel have and will fairly and adequately represent the interests of the Settlement Class; (e) the questions of law and fact common to the Settlement Class Members predominate over any questions affecting only individual Settlement Class Members; and (f) a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

5. Pursuant to Rules 23.01 and 23.02(3) of the Tennessee Rules of Civil Procedure, and for the purposes of this Settlement only, Plaintiffs are preliminarily certified as the Class Representatives and Robbins Geller Rudman & Dowd LLP is preliminarily certified as class counsel for the Settlement Class.

6. The Court preliminarily finds that the proposed Settlement should be approved as: (a) the result of serious, extensive arm's-length and non-collusive negotiations; (b) falling within a range of reasonableness warranting final approval; (c) having no obvious deficiencies; and (d) warranting notice of the proposed Settlement to Settlement Class Members and further consideration of the Settlement at the Settlement Hearing described below.

7. The Settlement Hearing, which the Court may require or permit to be conducted by telephonic or video conference in light of the ongoing exigent circumstances caused by the COVID-19 pandemic, shall be held before this Court on \_\_\_\_\_, 2023, at \_\_\_\_:\_\_\_\_ .m. at the Circuit Court for Morgan County, Ninth Judicial District in the State of Tennessee: (A) to determine: (i) whether the proposed Settlement of the Litigation on the terms and conditions provided for in the Stipulation is fair, reasonable,

and adequate to the Settlement Class and should be approved by the Court; (ii) whether the proposed Final Judgment and Order of Dismissal with Prejudice relating to Defendants, as provided under the Stipulation, should be entered; (iii) whether the Settlement Class should be finally certified for purposes of the Settlement only; (iv) whether Plaintiffs and Lead Counsel should be finally appointed as Class Representatives and Class Counsel, respectively, for purposes of this Settlement only; (v) the amount of attorneys' fees, charges, and expenses that should be awarded to Lead Counsel; and (vi) any award to Plaintiffs pursuant to 15 U.S.C. §77z-1(a)(4); (B) to hear any objections by Settlement Class Members to: (i) the Settlement or Plan of Allocation; (ii) the award of attorneys' fees and expenses to Lead Counsel; and (iii) awards to Plaintiffs; and (C) to consider such other matters the Court deems appropriate. The Court may adjourn the Settlement Hearing without further notice to Settlement Class Members. In the event the Court requires or permits a telephonic or video Settlement Hearing, Lead Counsel is instructed to update the Settlement website to prominently provide such information as well as the dial-in number.

8. The Court approves, as to form and content, the Notice, the Proof of Claim and Release form, and the Summary Notice, substantially in the forms annexed hereto as Exhibits 1, 2, and 3, respectively.

9. The Court finds that the mailing and distribution of the Notice and Proof of Claim form, and publishing of the Summary Notice substantially in the manner and form set forth in ¶¶11 and 12 of this Order: (a) constitute the best notice to Settlement Class Members practicable under the circumstances; (b) are reasonably calculated, under the circumstances, to describe the terms and effect of the Stipulation and of the Settlement and

to apprise Settlement Class Members of their right to object to or participate in the proposed Settlement; (c) are reasonable and constitute due, adequate, and sufficient notice to all persons entitled to receive such notice; and (d) satisfy all applicable requirements of the Tennessee Rules of Civil Procedure (including Rules 23.02(2)), the United States Constitution (including the Due Process Clause), the Private Securities Litigation Reform Act of 1995, the rules of this Court, and other applicable law.

10. The firm of Gilardi & Co. LLC (“Claims Administrator”) is hereby appointed to supervise and administer the notice procedure as more fully set forth below.

11. Not later than \_\_\_\_\_, 2023 [a date 14 calendar days after the Court signs and enters this Order] (“Notice Date”), the Claims Administrator shall commence mailing the Notice substantially in the form annexed hereto, to be mailed by First Class Mail to all Settlement Class Members who can be identified by reasonable effort. Not later than \_\_\_\_\_, 2023 [a date 14 calendar days after the Court signs and enters this Order], the Claims Administrator shall cause the Notice and Proof of Claim form substantially in the forms attached hereto, to be posted on the case-designated website, [www.MillerEnergySecuritiesLitigation.com](http://www.MillerEnergySecuritiesLitigation.com).

12. Not later than \_\_\_\_\_, 2023 [a date seven (7) calendar days after the Notice Date], the Claims Administrator shall cause the Summary Notice to be published once in *The Wall Street Journal* and once over a national newswire service.

13. At least seven (7) calendar days prior to the Settlement Hearing, Lead Counsel shall serve on Defendants’ Counsel and file with the Court proof, by affidavit or declaration, of such mailing and publishing.

14. The Claims Administrator shall use reasonable efforts to give notice to nominee purchasers such as brokerage firms and other persons or entities who purchased or otherwise acquired Miller Energy's Series C and/or Series D Preferred Stock on or after February 13, 2013, as record owners but not beneficial owners. Such nominee purchasers are directed, within seven (7) calendar days after their receipt of the Notice, to either forward copies of the Notice to their beneficial owners or to provide the Claims Administrator with lists of the names and addresses of the beneficial owners, and the Claims Administrator is ordered to send the Notice promptly to such identified beneficial owners. Nominee purchasers who elect to send the Notice to the beneficial owners shall send a statement to the Claims Administrator confirming that the mailing was made as directed. Additional copies of the Notice shall be made available to any record holder requiring such for the purpose of distribution to beneficial owners, and such record holders shall be reimbursed from the Settlement Fund, upon receipt by the Claims Administrator of proper documentation, for the reasonable expense of timely sending the Notice to beneficial owners, which expenses would not have been incurred except for the sending of such notice, subject to further order of this Court with respect to any dispute concerning such compensation.

15. All fees and expenses incurred in identifying and notifying Settlement Class Members shall be paid from the Settlement Fund and in no event shall any of the Released Parties bear any responsibility or liability for such fees or expenses.

16. All Settlement Class Members shall be bound by all determinations and judgments in the Litigation concerning the Settlement, whether favorable or unfavorable to

the Settlement Class, regardless of whether such Persons seek or obtain by any means, including, without limitation, by submitting a Proof of Claim or any similar documentation, any distribution from the Settlement Fund or the Net Settlement Fund.

17. Any Settlement Class Member may enter an appearance in the Litigation, at the Settlement Class Member's own expense, individually or through counsel of the Settlement Class Member's own choice. If a Settlement Class Member does not enter an appearance, that Settlement Class Member will be represented by Lead Counsel.

18. Any Person falling within the definition of the Settlement Class may, upon request, be excluded or "opt out" from the Settlement Class. Any such Person must submit to the Claims Administrator a request for exclusion ("Request for Exclusion"), by First-Class Mail such that it is received no later than \_\_\_\_\_, 2023 [a date 21 calendar days before the Settlement Hearing]. A Request for Exclusion must be signed and state: (a) the name, address, and telephone number of the Person requesting exclusion; (b) the Person's purchases, acquisitions, and sales of Miller Energy's Series C and/or Series D Preferred Stock on or after February 13, 2013; and (c) that the Person wishes to be excluded from the Settlement Class. The Request for Exclusion shall not be effective unless it provides the required information and is made within the time stated above, or the exclusion is otherwise accepted by the Court. All Persons who submit valid and timely Requests for Exclusion in the manner set forth in this paragraph shall have no rights under the Stipulation, shall not share in the distribution of the Net Settlement Fund, and shall not be bound by the Stipulation or any final judgment.

19. Any Person who is excluded from the Settlement Class by virtue of having submitted a valid and timely Request for Exclusion may, at any point up to seven days before the Settlement Hearing, submit a written revocation of Request for Exclusion following the same instructions in ¶18 above.

20. Lead Counsel shall cause to be provided to Defendants' Counsel copies of all Requests for Exclusion, a list of all Settlement Class Members who have requested exclusion, and any written revocation of Requests for Exclusion, as expeditiously as possible and in any event no later than \_\_\_\_\_, 2023 [a date 14 calendar days before the Settlement Hearing].

21. Any Settlement Class Member who does not request exclusion may appear at the Settlement Hearing and show cause why the proposed Settlement of the Litigation should or should not be approved as fair, reasonable, and adequate, why a judgment should or should not be entered thereon, why attorneys' fees and expenses should or should not be awarded to counsel for the Plaintiffs, or why awards pursuant to 15 U.S.C. §77z-1(a)(4) should or should not be granted to Plaintiffs; provided, however, that no Settlement Class Member or any other Person shall be heard or entitled to contest such matters, unless that Person has delivered by hand or sent by First-Class Mail written objections and copies of any papers and briefs such that they are received, not simply postmarked, on or before \_\_\_\_\_, 2023 [a date 21 calendar days before the Settlement Hearing], by Robbins Geller Rudman & Dowd LLP, Ellen Gusikoff Stewart, 655 West Broadway, Suite 1900, San Diego, CA 92101 and who shall then promptly forward copies to each counsel for Settling Defendants, and filed said objections, papers, and briefs with the Clerk of the



Circuit Court for Morgan County, Ninth Judicial District in the State of Tennessee, Morgan County Courthouse, 415 North Kingston Street, Wartburg, TN 37887, on or before \_\_\_\_\_, 2023 [a date 21 calendar days before the Settlement Hearing]. Any objections must: (a) state the name, address, and telephone number of the objector and must be signed by the objector even if represented by counsel; (b) state that the objector is objecting to the proposed Settlement or application for attorneys' fees or expenses in this Litigation; (c) state the objection(s) and the specific reasons for each objection, including any legal and evidentiary support the objector wishes to bring to the Court's attention; (d) state whether the objection applies only to the objector, to a subset of the Settlement Class or to the entire Settlement Class; (e) include documents sufficient to prove the objector's membership in the Settlement Class, such as the number of shares of Miller Energy's Series C and/or Series D Preferred Stock purchased or otherwise acquired on or after February 13, 2013, as well as the dates and prices of each such purchase or acquisition; (f) state whether the objector intends to appear at the Settlement Hearing and if the objector intends to appear at the Settlement Hearing through counsel; (g) state the identity of all attorneys who will appear on the objector's behalf at the Settlement Hearing, identify all of the witnesses they may call to testify, and provide copies of exhibits that the objector intends to present at the Settlement Hearing; and (h) state that the objector submits to the jurisdiction of the Court with respect to the objection or request to be heard and the subject matter of the Settlement of the Litigation, including, without limitation, enforcement of the terms of the Settlement. The Court will consider a Settlement Class Member's objection only if the Settlement Class Member has complied with the above requirements. Any

Settlement Class Member who does not make his, her or its objection in the manner provided shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness or adequacy of the proposed Settlement as set forth in the Stipulation or to the award of fees, charges, and expenses to Lead Counsel or any award to Plaintiffs, unless otherwise ordered by the Court. Settlement Class Members submitting written objections are not required to attend the Settlement Hearing, but any Settlement Class Member wishing to be heard orally in opposition to the approval of the Settlement and/or the application for attorneys' fees and expenses must file a written objection and indicate in the written objection of any witnesses they may call to testify and copies of any exhibits they intend to introduce at the Settlement Hearing. Settlement Class Members do not need to appear at the Settlement Hearing or take any other action to indicate their approval.

22. All funds held by the Escrow Agent shall be deemed and considered to be in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as such funds shall be distributed pursuant to the Stipulation and/or further order(s) of the Court.

23. All opening briefs and supporting documents in support of the Settlement and any application by Lead Counsel for attorneys' fees, charges, and expenses and awards to Plaintiffs shall be filed and served by no later than \_\_\_\_\_, 2023 [a date 35 calendar days before the Settlement Hearing], and any reply papers shall be filed and served no later than \_\_\_\_\_, 2023 [a date seven calendar days before the Settlement Hearing].

24. The Released Parties shall have no responsibility for any Plan of Allocation that may be proposed or any application for attorneys' fees, charges, or expenses submitted by Lead Counsel or any award to Plaintiffs, and such matters will be considered separately from the fairness, reasonableness, and adequacy of the Settlement.

25. At or after the Settlement Hearing, the Court shall determine whether any Plan of Allocation proposed by Lead Counsel, and any application for attorneys' fees, charges, or expenses, should be approved. The Court reserves the right to enter the Order and Final Judgment approving the Settlement regardless of whether it has approved any Plan of Allocation or awarded attorneys' fees, charges, and expenses.

26. All reasonable expenses incurred in identifying and notifying Settlement Class Members, as well as administering the Settlement Fund, shall be paid as set forth in the Stipulation. In the event the Settlement is not approved by the Court, or otherwise fails to become effective, neither Plaintiffs nor any of their counsel shall have any obligation to repay any amounts incurred and properly disbursed pursuant to ¶¶2.7 or 2.8 of the Stipulation.

27. Neither this Order, the Stipulation, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, shall be construed as an admission or concession by the Defendants of the truth of any of the allegations in the Litigation, or of any liability, fault, or wrongdoing of any kind.

28. The Court reserves the right to adjourn the date of the Settlement Hearing without further notice to Settlement Class Members, and retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlement. The Court

may approve the Settlement, with such modifications as may be agreed to by the Settling Parties, if appropriate, without further notice to the Settlement Class.

29. If the Stipulation and the Settlement set forth therein is not approved or consummated for any reason whatsoever, the Stipulation and Settlement and all proceedings had in connection therewith shall be without prejudice to the rights of the Settling Parties *status quo ante* as set forth in ¶7.5 of the Stipulation.

30. Until otherwise ordered by the Court, the Court shall continue to stay all proceedings in the Litigation against Defendants, other than proceedings necessary to carry out or enforce the terms and conditions of the Stipulation. Pending final determination of whether the proposed Settlement should be approved, neither Plaintiffs nor any Settlement Class Member, directly or indirectly, representatively, or in any other capacity, shall commence or prosecute against the Defendants, any action or proceedings in any court or tribunal asserting any of the Released Claims.

31. Except to the extent the Settling Parties may agree to resolve through mediation any disputes that may arise prior to the entry of judgment, the Court retains exclusive jurisdiction over the Litigation to consider all further matters arising out of or connected with the Settlement.

IT IS SO ORDERED.

DATED: \_\_\_\_\_

\_\_\_\_\_  
THE HONORABLE MICHAEL S. PEMBERTON  
CIRCUIT COURT JUDGE

# EXHIBIT A-1

IN THE CIRCUIT COURT FOR MORGAN COUNTY  
NINTH JUDICIAL DISTRICT  
THE STATE OF TENNESSEE

MARCIA GOLDBERG, Individually and ) Case No. 2015-CV-33  
on Behalf of All Others Similarly Situated, )  
Plaintiff, ) Judge Pemberton  
vs. )  
DELOY MILLER, et al, )  
Defendants. )

---

KENNETH GAYNOR, Individually and on) Case No. 2015-CV-34  
Behalf of All Others Similarly Situated, )  
Plaintiff, ) Judge Pemberton  
vs. )  
DELOY MILLER, et al, )  
Defendants. )

---

**NOTICE OF PENDENCY OF CLASS ACTION, PROPOSED CLASS ACTION  
SETTLEMENT, AND MOTION FOR ATTORNEYS' FEES AND EXPENSES**

**EXHIBIT A-1**

**TO: ALL PERSONS OR ENTITIES WHO PURCHASED OR OTHERWISE ACQUIRED MILLER ENERGY'S 10.75% SERIES C CUMULATIVE REDEEMABLE PREFERRED STOCK ("SERIES C") AND/OR 10.5% SERIES D FIXED RATE/FLOATING CUMULATIVE REDEEMABLE PREFERRED STOCK ("SERIES D") ON OR AFTER FEBRUARY 13, 2013, AND WHO WERE DAMAGED THEREBY**

**NOTICE OF PENDENCY OF CLASS ACTION:** Please be advised that your rights may be affected by the above-captioned class action lawsuits pending in this Court ("Litigation") if you purchased or otherwise acquired Miller Energy's Series C and/or Series D Preferred Stock on or after February 13, 2013.<sup>1</sup>

**NOTICE OF SETTLEMENT:** Please also be advised that Plaintiffs Kenneth Gaynor, Marcia Goldberg, and Christopher R. Vorrath ("Plaintiffs"), on behalf of the Settlement Class (as defined at page \_\_\_ below), have reached a proposed settlement of the Litigation with Underwriter Defendants Northland Capital Markets, Dominick & Dominick, LLC (n/k/a Dominick & Dickerman LLC), Ladenburg Thalmann & Co. Inc., I-Bankers Securities, Inc., MLV & Co. LLC, National Securities Corporation, Maxim Group, LLC and Aegis Capital Corporation, and Individual Defendants Deloy Miller, Scott M. Boruff, David J. Voyticky, Catherine A. Rector (n/k/a Catherine Rainey), David M. Hall, Merrill A. McPeak, Gerald Hannahs, Charles M. Stivers, Don A. Turkleson, Bob G. Gower, Joseph T. Leary, William B. Richardson, and Marceau N. Schlumberger ("Defendants") for a total of \$7,600,000 in cash that will resolve all claims in the Litigation against Defendants.

**THIS NOTICE WAS AUTHORIZED BY THE COURT. IT IS NOT A LAWYER SOLICITATION. PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY.**

---

<sup>1</sup> All capitalized terms used in this Notice that are not otherwise defined herein shall have the meanings provided in the Stipulation and Agreement of Settlement dated January 6, 2023 ("Stipulation"), which is available on the website for the Litigation at [www.MillerEnergySecuritiesLitigation.com](http://www.MillerEnergySecuritiesLitigation.com).

## WHY SHOULD I READ THIS NOTICE?

This Notice is given pursuant to an order issued by the Circuit Court for Morgan County, Ninth Judicial District in the State of Tennessee (“Court”). This Notice serves to inform you of the pendency and proposed Settlement of the above-captioned class action lawsuits for \$7,600,000 in cash and the hearing (“Settlement Hearing”) to be held by the Court to consider the fairness, reasonableness, and adequacy of the Settlement, as set forth in the Stipulation, by and between Plaintiffs, on behalf of themselves and the Settlement Class (as defined below), on the one hand, and Underwriter Defendants Northland Capital Markets, Dominick & Dominick, LLC (n/k/a Dominick & Dickerman LLC), Ladenburg Thalmann & Co. Inc., I-Bankers Securities, Inc., MLV & Co. LLC, National Securities Corporation, Maxim Group, LLC and Aegis Capital Corporation, and Individual Defendants Deloy Miller, Scott M. Boruff, David J. Voyticky, Catherine A. Rector (n/k/a Catherine Rainey), David M. Hall, Merrill A. McPeak, Gerald Hannahs, Charles M. Stivers, Don A. Turkleson, Bob G. Gower, Joseph T. Leary, William B. Richardson, and Marceau N. Schlumberger (“Defendants”), on the other hand.

**This Notice is intended to inform you how the pendency of this class action and the proposed Settlement may affect your rights and what steps you may take in reaction to it. This Notice is NOT an expression of any opinion by the Court as to the merits of the claims or defenses asserted in the lawsuit or whether the Defendants engaged in any wrongdoing.**

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THE SETTLEMENT:</b>	
<b>ACTIONS YOU MAY PURSUE</b>	<b>EFFECT OF TAKING THIS ACTION</b>
<b>EXCLUDE YOURSELF FROM THE SETTLEMENT</b>	This is the only option that allows you to ever be part of any other lawsuit against Defendants about the legal claims related to the issues raised in this Litigation. <b>A written request for exclusion must be received on or before _____, 2023.</b> If you are considering excluding yourself from the Settlement Class, please note that there is a risk that any new claims asserted against Defendants may no longer be timely and would be time-barred. You should talk to a lawyer before you request exclusion from the Settlement Class for the purpose of bringing a separate lawsuit. <i>See</i> pages ___ below. You may not make a claim for Settlement proceeds if you exclude yourself.



<b>OBJECT TO THE SETTLEMENT BY SUBMITTING A WRITTEN OBJECTION</b>	Write to the Court and explain why you do not like the Settlement and/or the request for attorneys' fees and expenses. <b>Objections must be filed with the Court and served on the parties on or before _____, 2023.</b>
<b>ATTEND THE SETTLEMENT HEARING ON _____, 2023, AT _: .M., AND FILE A NOTICE OF INTENTION TO APPEAR</b>	Ask to speak in Court about the fairness of the Settlement. <b>Requests to speak must be filed with the Court and served on the parties on or before _____, 2023. If you submit a written objection, you may (but you do not have to) attend the hearing.</b>
<b>DO NOTHING</b>	Receive no payment. You will, however, still be a Settlement Class Member, which means that you give up your right to ever be part of any other lawsuit against the Defendants about the legal claims being resolved by this Settlement and you will be bound by any judgments or orders entered by the Court in the Litigation.

## SUMMARY OF THIS NOTICE

### Description of the Litigation and the Class

This Notice relates to a proposed Settlement of claims in a pending securities class action brought by investors who purchased or otherwise acquired Miller Energy's Series C and/or Series D preferred shares on or after February 13, 2013 alleging, among other things, that the Registration Statement and prospectus supplements for the offerings of the securities at issue were materially false and misleading, in violation of the federal securities laws. Plaintiffs further allege that the Underwriter Defendants failed to perform adequate due diligence in connection with their role as an underwriter of the Offerings and were negligent in failing to ensure that the Registration Statement was prepared properly and accurately, and was free from misstatements or omissions of material fact. Defendants deny all liability. A more detailed description of the Litigation is set forth on pages \_\_\_ below. The "Settlement Class" means, for purposes of the Settlement only, all persons or entities who purchased or otherwise acquired Miller Energy's Series C and/or Series D Preferred Stock on or after February 13, 2013, and who were damaged thereby. Those excluded from the Settlement Class are described on page \_\_\_ below. The proposed Settlement, if approved by the Court, will settle claims of the Settlement Class against the Released Parties, as defined on pages \_\_\_ below.

### **Statement of Class Recovery**

Pursuant to the Settlement described herein, a \$7,600,000 settlement fund has been established (“Settlement Amount”). The Settlement Amount together with any interest earned thereon is the “Settlement Fund.” The Settlement Fund less: (a) any taxes and tax expenses; (b) any Notice and Administration Expenses; and (c) any attorneys’ fees and litigation charges and expenses (including any award to Plaintiffs pursuant to 15 U.S.C. §77z-1(a)(4) in connection with their representation of the Settlement Class) awarded by the Court, will be distributed to Settlement Class Members under a plan of allocation that is approved by the Court. The plan of allocation (“Plan of Allocation”) is set forth on pages \_\_\_ below.

### **Statement of Potential Outcome of the Case**

The Settling Parties do not agree on whether Plaintiffs would have prevailed on any of their claims against Defendants. They also do not agree on the average amount of damages per share, if any, that would be recoverable if the Settlement Class prevailed on the claims alleged. Defendants deny that they engaged in any wrongdoing as alleged by Plaintiffs, deny any liability whatsoever for any of the claims alleged by Plaintiffs, and deny that the Settlement Class has suffered any injuries or damages. The issues on which the Settling Parties disagree are many, but include: (1) whether Defendants engaged in conduct that would give rise to any liability to the Settlement Class under the federal securities laws; (2) whether Defendants have valid defenses to any such claims of liability; (3) the amount by which the price of Miller Energy Series C and/or Series D Preferred Stock were artificially inflated, if at all, as well as the methodology for estimating any such inflation; (4) the extent to which external factors, such as general market, economic, and industry conditions, influenced the trading price of Miller Energy’s Series C and/or Series D Preferred Stock; (5) the amount, if any, of any alleged damages suffered by purchasers or acquirers of Miller Energy Series C and/or Series D Preferred Stock; and (6) whether Defendants had other meritorious defenses to the alleged claims.

### **Statement of Attorneys’ Fees and Expenses Sought**

Lead Counsel (as defined on page \_\_\_ below) will apply to the Court for an award of attorneys’ fees to be paid from the Settlement Fund in an amount not to exceed thirty-three percent (33%) of the Settlement Amount, plus charges and expenses not to exceed \$850,000, including an award to each Plaintiff of no more than \$15,000 pursuant to 15 U.S.C. §77z-1(a)(4) in connection with their representation of the Settlement Class, plus interest earned on these amounts at the same rate as earned by the Settlement Fund. Lead Counsel have expended considerable time and effort in the prosecution of this Litigation on a wholly contingent basis and have advanced the expenses of the Litigation in the expectation that if they were successful in obtaining a recovery for the Settlement Class they would be paid from such recovery.

### **Further Information**

For further information regarding the Litigation or this Notice or to review the Stipulation, please contact the Claims Administrator toll-free at 1-866-684-3885, or visit the website [www.MillerEnergySecuritiesLitigation.com](http://www.MillerEnergySecuritiesLitigation.com).

You may also contact a representative of counsel for the Settlement Class: Greg Wood, Shareholder Relations, Robbins Geller Rudman & Dowd LLP, 655 West Broadway, Suite 1900, San Diego, CA 92101, 1-800-449-4900, [settlementinfo@rgrdlaw.com](mailto:settlementinfo@rgrdlaw.com).

**Please DO NOT Call the Court or Defendants with Questions About the Settlement.**

### **Reasons for the Settlement**

Plaintiffs' principal reason for entering into the Settlement is the substantial cash benefit to the Settlement Class now, without further risk or the delays inherent in continued litigation. The cash benefit under the Settlement must be considered against the significant risk that a smaller recovery – or, indeed, no recovery at all – might be achieved after trial, and likely appeals, a process that could last several years into the future.

Defendants have denied and continue to deny each and all of the claims alleged by Plaintiffs in the Litigation. Defendants have expressly denied and continue to deny all charges of wrongdoing or liability against them arising out of any of the conduct, statements, acts, or omissions alleged, or that could have been alleged, in the Litigation. For Defendants, the principal reason for the Settlement is to eliminate the burden, expense, uncertainty, and risks inherent in any litigation, especially in complex cases such as this Litigation.

## **WHAT IS THIS LAWSUIT ABOUT?**

### **THE ALLEGATIONS**

The Litigation is currently pending in in the Circuit Court for Morgan County, Ninth Judicial District in the State of Tennessee, before the Honorable Michael S. Pemberton, Circuit Court Judge. The initial complaints were filed on November 9, 2015. In response, on December 9, 2015, the Underwriter Defendants, pursuant to 28 U.S.C. §§1441 and 1446, removed both cases to the U.S. District Court for the Eastern District of Tennessee, Knoxville Division. On January 8, 2016, plaintiffs Kenneth Gaynor and Marcia Goldberg filed motions to remand which were denied on September 8, 2016, resulting in the continuation of the Litigation in federal court. The Federal Court appointed Kenneth Gaynor, Marcia Goldberg, Christopher R. Vorrath, and Gabriel R. Hull as Lead Plaintiffs on December 27, 2016.

Plaintiffs filed the Master Consolidated Complaint on January 5, 2017 (“Master Complaint”). The Master Complaint alleges violations of Sections 11, 12(a)(2), and 15 of the Securities Act, on behalf of persons who purchased or otherwise acquired the securities of Miller Energy pursuant and/or traceable to the September 6, 2012, Registration Statement and prospectus supplements that issued Series C and/or Series D Preferred Stock. The named defendants are the Underwriter Defendants and the Individual Defendants. The Master Complaint alleges that Plaintiffs’ allegedly strict liability claims arise from Miller Energy’s false and misleading financial accounting and reporting related to the valuation of certain oil and gas assets (“Alaska Assets”). The Master Complaint also alleges that in December 2009, Miller Energy purchased the Alaska Assets for \$2.25 million in cash, along with the assumption of certain liabilities valued at approximately \$2 million and, within weeks, reported them at an overstated value of approximately \$480 million, and recognized a one-time “bargain purchase gain” of \$277 million for its fiscal third quarter ended January 2010 and fiscal year ended April 2010. Plaintiffs assert that the Offerings incorporated by reference certain periodic financial reporting filings Miller Energy had previously made with the SEC, as well as all future filings occurring up until the termination of the Offerings, including the overstated value of the Alaska Assets. Following the close of the Offerings, Plaintiffs allege that a series of disclosures revealed that the Registration Statement was allegedly false and misleading because the Company overstated the value of the Alaska Assets. In September 2015, Miller Energy’s Series C Preferred Stock and Series D Preferred Stock were delisted after a more than 98% decline in their value. Plaintiffs further allege that when the alleged truth regarding value of the Alaska Assets was revealed, alleged artificial inflation was removed from the price of Miller Energy Series C and Series D Preferred Stock, damaging Settlement Class Members. Defendants deny each and all of Plaintiffs’ allegations. Defendants contend that they are not liable for any such alleged false or misleading statements and that all information required to be disclosed by the federal securities laws was so disclosed.

**THE COURT HAS NOT RULED AS TO WHETHER THE DEFENDANTS ARE LIABLE TO PLAINTIFFS OR TO THE SETTLEMENT CLASS. THIS NOTICE IS NOT INTENDED TO BE AN EXPRESSION OF ANY OPINION BY THE COURT WITH RESPECT TO THE TRUTH OF THE ALLEGATIONS IN THE LITIGATION OR THE MERITS OF THE CLAIMS OR DEFENSES ASSERTED. THIS NOTICE IS SOLELY TO ADVISE YOU OF THE PENDENCY AND PROPOSED SETTLEMENT OF THIS LITIGATION AND YOUR RIGHTS IN CONNECTION WITH THAT SETTLEMENT.**

### **PROCEDURAL HISTORY**

This case has been vigorously litigated for more than six years. After Plaintiffs filed the Master Complaint on January 5, 2017, the parties extensively briefed and argued Defendants’ motion to dismiss. After the Court granted in part and denied in part the motions to dismiss on August 11, 2017, and on September 25, 2017, Defendants answered

the Master Complaint, denying all material allegations and asserting a number of defenses. Following the Court's denial of the motion to dismiss, the parties began engaging in fact discovery involving Defendants, Plaintiffs, and numerous third parties. This discovery, which was ongoing at the time of the Settlement, resulted in the parties producing and receiving over 1.6 million pages of documents. Plaintiffs moved for class certification on January 19, 2018. On August 6, 2018, United States Magistrate Judge Poplin issued a Report and Recommendation to grant Plaintiffs' motion for class certification in its entirety but that Report and Recommendation was never adopted by the Court.

On June 1, 2018, Plaintiffs filed a Renewed Motion to Remand predicated on *Cyan, Inc. v. Beaver Cnty. Emps. Ret. Fund*, \_\_U.S. \_\_, 138 S. Ct. 1061, 1078 (2018). ECF 155. On August 8, 2018, the Underwriter Defendants and Plaintiffs agreed to pursue mediation and jointly moved the Court for a temporary stay of the Litigation. On August 9, 2018, the Federal Action was stayed for mediation. On September 5, 2018, mediation was held with Michelle Yoshida, Esq. of Phillips ADR and involved an extended effort to settle the claims against certain Defendants, and was preceded by the exchange of mediation statements. Although the mediation was unsuccessful, the parties continued to engage in settlement discussions thereafter.

On April 9, 2019, after months of continued negotiations, the parties notified the Federal Court that mediation was unsuccessful and requested the stay be lifted. ECF 181. Instead of lifting the stay, the Court ordered all parties to mediation with Honorable Christopher H. Steger, a United States Magistrate Judge for the Eastern District of Tennessee. ECF 182. The mediation was held on August 17, 2019, and failed to result in a settlement.

The Federal Action remained stayed until December 5, 2019, when the Federal Court lifted the stay and set jury trial for July 7, 2020. ECF 184. The next day, the Federal Court granted Plaintiffs' Renewed Motion to Remand. ECF 185. The parties continued to litigate the Federal Action, until March 31, 2020, when the Court issued an order clarifying remand, dismissing the case without prejudice, and directing the clerk to close the case. *Hull Action*, ECF 232.

Ultimately, Counsel for Defendants and Plaintiffs continued settlement discussions and agreed to settle the Litigation, for a total cash payment of \$7,600,000 for the benefit of the Settlement Class.

## **HOW DO I KNOW IF I AM A SETTLEMENT CLASS MEMBER?**

All persons or entities who purchased or otherwise acquired Miller Energy's Series C and/or Series D Preferred Stock on or after February 13, 2013, and were damaged thereby, and are not otherwise excluded, are Settlement Class Members. As set forth in the Stipulation, excluded from the Settlement Class are: all Defendants in these actions and their families, the officers and directors and affiliates of Defendants, at all relevant



times, members of their immediate families and their legal representatives, heirs, successors or assigns, and any entity in which Defendants have or had a controlling interest. Also excluded from the Settlement Class is bankrupt Miller Energy Resources, Inc. and its successors and assigns, including Glacier Oil & Gas Corporation, as well as Williams Financial Group, and Paul W. Boyd. Also excluded from the Settlement Class are those Settlement Class Members who timely and validly request exclusion from the Settlement Class pursuant to the requirements set forth below.

**PLEASE NOTE:** Receipt of this Notice does not mean that you are a Settlement Class Member or that you will be entitled to receive a payment from this Settlement or any subsequent settlements.

### **WHAT IS THE MONETARY VALUE OF THE PROPOSED SETTLEMENT?**

The Settlement, if approved, will result in the creation of a cash settlement fund of \$7,600,000. This fund, plus accrued interest and minus the costs of this Notice and all costs associated with the administration of the Settlement, including Taxes and Tax Expenses, as well as attorneys' fees and expenses, and any award to Plaintiffs in connection with their representation of the Settlement Class, as approved by the Court ("Net Settlement Fund"), will be distributed to eligible Settlement Class Members pursuant to a Plan of Allocation that is described in the next section of this Notice. Settlement Class Members who receive any portion of the fund will be solely responsible for any federal, state or local taxes due on the amounts they receive.

### **WHAT IS THE PROPOSED PLAN OF ALLOCATION?**

If the Settlement is approved by the Court, the Net Settlement Fund will be distributed to eligible Authorized Claimants – *i.e.*, members of the Settlement Class who timely submit valid Proof of Claim forms that are accepted for payment by the Court – in accordance with this proposed Plan of Allocation ("Plan of Allocation" or "Plan") or such other Plan of Allocation as the Court may approve. Settlement Class Members who do not timely submit valid Proof of Claim forms will not share in the Net Settlement Fund, but will otherwise be bound by the Settlement. The Court may approve this proposed Plan of Allocation, or modify it, without additional notice to the Settlement Class. Any order modifying the Plan of Allocation will be posted on the settlement website, [www.MillerEnergySecuritiesLitigation.com](http://www.MillerEnergySecuritiesLitigation.com).

The Plan of Allocation is intended to compensate Settlement Class Members who purchased or acquired certain publicly traded securities of Miller Energy pursuant or traceable to Miller Energy's Form S-3 Registration Statement filed on September 6, 2012, and were damaged thereby under the Securities Act of 1933 ("Securities Act").

The objective of the Plan of Allocation is to distribute the Settlement proceeds equitably among those Settlement Class Members who suffered economic losses as a

proximate result of the alleged wrongdoing. The Plan of Allocation is not a formal damage analysis, and the calculations made in accordance with the Plan of Allocation are not intended to be estimates of, or indicative of, the amounts that Settlement Class Members might have been able to recover after a trial. Nor are the calculations in accordance with the Plan of Allocation intended to be estimates of the amounts that will be paid to Authorized Claimants under the Settlement. The computations under the Plan of Allocation are only a method to weigh, in a fair and equitable manner, the claims of Authorized Claimants against one another for the purpose of making *pro rata* allocations of the Net Settlement Fund.

In order to have recoverable damages, Claimants must have purchased or otherwise acquired shares of at least one of the following securities: (i) Series C Cumulative Redeemable Preferred Stock (the “Series C Preferred Stock”); and/or (ii) Series D Fixed/Floating Rate Cumulative Redeemable Preferred Stock (the “Series D Preferred Stock”) (collectively referred to as the “Miller Energy Preferred Securities”). Additionally, in order to have recoverable damages, Claimants must have purchased or otherwise acquired his, her, or their shares of the Miller Energy Preferred Securities on or after February 13, 2013, pursuant or traceable to Miller Energy’s Form S-3 Registration Statement filed on September 6, 2012, and made effective September 18, 2012 (the “Registration Statement”) and/or certain prospectus supplements.<sup>2</sup> Finally, if Claimants purchased or otherwise acquired his, her, or their shares of the Miller Energy Preferred Securities on or after February 13, 2013, it will be presumed for purposes of the Settlement that the shares were purchased pursuant to or traceable to the Registration Statement.

## **CALCULATION OF RECOGNIZED LOSS AMOUNTS**

Securities Act claims were asserted with respect to Miller Energy Preferred Securities purchased or otherwise acquired pursuant or traceable to the Registration Statement. Section 11 of the Securities Act provides a statutory formula for the calculation

---

<sup>2</sup> The prospectus supplements at issue are: Miller Energy Resources, Inc., Form 424B5, filed October 12, 2012 (the “October 2012 Prospectus Supplement”); Miller Energy Resources, Inc., Form 424B5, filed February 13, 2013 (the “February 2013 Prospectus Supplement”); Miller Energy Resources, Inc., Form 424B5, filed May 8, 2013 (the “May 2013 Prospectus Supplement”); Miller Energy Resources, Inc., Form 424B5, filed June 28, 2013 (the “June 2013 Prospectus Supplement”); Miller Energy Resources, Inc., Form 424B5, filed September 26, 2013 (the “September 2013 Prospectus Supplement”); Miller Energy Resources, Inc., Form 424B5, filed October 17, 2013 (the “October 2013 Prospectus Supplement”); and Miller Energy Resources, Inc., Form 424B5, filed August 21, 2014 (the “August 2014 Prospectus Supplement”) (collectively referred to as the “Prospectus Supplements”). Any transactions in the Miller Energy Preferred Securities executed outside of regular trading hours for the U.S. financial markets shall be deemed to have occurred during the next regular trading session.

of damages under that provision. The formulas set forth below, developed by Plaintiffs' damages expert generally tracks the statutory formula. For purposes of the calculations, November 9, 2015 is the date of suit, and [ ] is the proxy for the date of judgment.

Based on the formulas stated below, a "Recognized Loss Amount" will be calculated for each eligible purchase or acquisition of the Miller Energy Preferred Securities that is listed on the Proof of Claim form and for which adequate documentation is provided. If a "Recognized Loss Amount" calculates to a negative number or zero under the formula below, that Recognized Loss Amount will be zero. The sum of each Settlement Class Member's "Recognized Loss Amounts" shall be the "Recognized Claim" for each Settlement Class Member.

## **Miller Energy Series C Preferred Stock**

### **1. Series C At-the-Market Offering**

For each share of Miller Energy Series C Preferred Stock purchased or otherwise acquired on or after February 13, 2013, purchased or otherwise acquired pursuant or traceable to the Registration Statement and/or the October 2012 Prospectus Supplement, and

- Sold before the close of trading on November 9, 2015, the Recognized Loss per share is the purchase price minus the sales price.
- Held as of the close of trading on November 9, 2015, the Recognized Loss per share is the purchase price minus \$0.08 per share, the price of Miller Energy Series C Preferred Stock on November 9, 2015.

### **2. February 2013 Series C Offering**

For each share of Miller Energy Series C Preferred Stock purchased or otherwise acquired pursuant or traceable to the Registration Statement and/or the February 2013 Prospectus Supplement, and

- Sold before the close of trading on November 9, 2015, the Recognized Loss per share is the purchase price (not to exceed \$22.90 per share, the issue price of the February 2013 Series C Offering) minus the sales price.
- Held as of the close of trading on November 9, 2015, the Recognized Loss per share is the purchase price (not to exceed \$22.90 per share, the issue price of the February 2013 Series C Offering) minus \$0.08 per share, the price of Miller Energy Series C Preferred Stock on November 9, 2015.



### **3. May 2013 Series C Offering**

For each share of Miller Energy Series C Preferred Stock purchased or otherwise acquired pursuant or traceable to the Registration Statement and/or the May 2013 Prospectus Supplement, and

- Sold before the close of trading on November 9, 2015, the Recognized Loss per share is the purchase price (not to exceed \$22.25 per share, the issue price of the May 2013 Series C Offering) minus the sales price.
- Held as of the close of trading on November 9, 2015, the Recognized Loss per share is the purchase price (not to exceed \$22.25 per share, the issue price of the May 2013 Series C Offering), minus \$0.08 per share, the price of Miller Energy Series C Preferred Stock on November 9, 2015.

### **4. June 2013 Series C Offering**

For each share of Miller Energy Series C Preferred Stock purchased or otherwise acquired pursuant or traceable to the Registration Statement and/or the June 2013 Prospectus Supplement, and

- Sold before the close of trading on November 9, 2015, the Recognized Loss per share is the purchase price (not to exceed \$21.50 per share, the issue price of the June 2013 Series C Offering) minus the sales price.
- Held as of the close of trading on November 9, 2015, the Recognized Loss per share is the purchase price (not to exceed \$21.50 per share, the issue price of the June 2013 Series C Offering) minus \$0.08 per share, the price of Miller Energy Series C Preferred Stock on November 9, 2015.

## **Miller Energy Series D Preferred Stock**

### **1. September 2013 Series D Offering**

For each share of Miller Energy Series D Preferred Stock purchased or otherwise acquired pursuant or traceable to the Registration Statement and/or the September 2013 Prospectus Supplement, and

- Sold before the close of trading on November 9, 2015, the Recognized Loss per share is the purchase price (not to exceed \$25.00 per share, the issue price of the September 2013 Series D Offering) minus the sales price.
- Held as of the close of trading on November 9, 2015, the Recognized Loss per share is the purchase price (not to exceed \$25.00 per share, the issue price of the September 2013 Series D Offering) minus \$0.09 per share, the price of Miller Energy Series D Preferred Stock on November 9, 2015.

## **2. Series D At-the-Market Offering**

For each share of Miller Energy Series D Preferred Stock purchased or otherwise acquired pursuant or traceable to the Registration Statement and/or the October 2013 Prospectus Supplement, and

- Sold before the close of trading on November 9, 2015, the Recognized Loss per share is the purchase price minus the sales price.
- Held as of the close of trading on November 9, 2015, the Recognized Loss per share is the purchase price, minus \$0.09 per share, the price of Miller Energy Series D Preferred Stock on November 9, 2015.

## **3. August 2014 Series D Offering**

For each share of Miller Energy Series D Preferred Stock purchased or otherwise acquired pursuant or traceable to the Registration Statement and/or the August 2014 Prospectus Supplement, and

- Sold before the close of trading on November 9, 2015, the Recognized Loss per share is the purchase price (not to exceed \$24.50 per share, the issue price of the August 2014 Series D Offering) minus the sales price.
- Held as of the close of trading on November 9, 2015, the Recognized Loss per share is the purchase price (not to exceed \$24.50 per share, the issue price of the August 2014 Series D Offering) minus \$0.09 per share, the price of Miller Energy Series D Preferred Stock on November 9, 2015.

## **ADDITIONAL PROVISIONS**

If a Settlement Class Member held Miller Energy Preferred Securities prior to February 13, 2013 or made multiple purchases, acquisitions or sales of Miller Energy Preferred Securities in one or more of the offerings detailed above, the starting point for calculating a Claimant's Recognized Loss is to match the Claimant's holdings, purchases and acquisitions to their sales using the FIFO (*i.e.*, first-in-first-out) method. Under the FIFO method, Miller Energy Preferred Securities sold after February 13, 2013 will be first matched, in chronological order against the respective security purchased or acquired on or after February 13, 2013.

Purchases or acquisitions and sales of Miller Energy Preferred Securities shall be deemed to have occurred on the "contract" or "trade" date as opposed to the "settlement" or "payment" date. The receipt or grant by gift, inheritance or operation of law of Miller Energy Preferred Securities during the shall not be deemed a purchase, acquisition or sale of Miller Energy Preferred Securities for the calculation of Recognized Loss, unless (i) the donor or decedent purchased or otherwise acquired such Miller Energy Preferred Securities pursuant or traceable to one of the offerings listed above on or after February 13, 2013; (ii)

no Proof of Claim was submitted by or on behalf of the donor, on behalf of the decedent, or by anyone else with respect to such Miller Energy Preferred Securities; and (iii) it is specifically so provided in the instrument of gift or assignment.

An Authorized Claimant's Recognized Loss shall be the amount used to calculate the Authorized Claimant's *pro rata* share of the Net Settlement Fund. If the sum total of Recognized Loss of all Authorized Claimants who are entitled to receive payment out of the Net Settlement Fund is greater than the Net Settlement Fund, each Authorized Claimant shall receive his, her, or its *pro rata* share of the Net Settlement Fund. The *pro rata* share shall be the Authorized Claimant's Recognized Loss divided by the total of the Recognized Loss of all Authorized Claimants, multiplied by the total amount in the Net Settlement Fund. Given the costs of distribution, the Net Settlement Fund will be allocated among all Authorized Claimants whose Distribution Amount (defined below) is \$10 or greater.

### **DO I NEED TO CONTACT LEAD COUNSEL IN ORDER TO PARTICIPATE IN THE DISTRIBUTION OF THE SETTLEMENT FUND?**

No. If you have received this Notice and timely submit your Proof of Claim to the designated address, you need not contact Lead Counsel. If your address changes, please contact the Claims Administrator at:

*Miller Energy Securities Litigation Settlement*  
c/o Gilardi & Co., LLC  
P.O. Box 43354  
Providence, RI 02940-3354  
Telephone: 1-866-684-3885  
[www.MillerEnergySecuritiesLitigation.com](http://www.MillerEnergySecuritiesLitigation.com)

### **THERE WILL BE NO PAYMENTS IF THE STIPULATION IS TERMINATED**

The Stipulation may be terminated under several circumstances outlined in it. If the Stipulation is terminated, the Litigation will proceed as if the Stipulation had not been entered into.

### **WHAT ARE THE REASONS FOR SETTLEMENT?**

The Settlement was reached after contested motion practice directed to the sufficiency of Plaintiffs' claims. The parties also completed certain document discovery. Nevertheless, the Court has not reached any final decisions in connection with Plaintiffs' claims against Defendants. Instead, Plaintiffs and Defendants have agreed to this Settlement, which was reached with the assistance of a highly respected mediator. In reaching the Settlement, the parties have avoided the cost, delay, and uncertainty of further litigation.

As in any litigation, Plaintiffs and the Settlement Class would face an uncertain outcome if they did not agree to the Settlement. If Plaintiffs succeeded at trial, Defendants would likely file appeals that would postpone final resolution of the case. Continuation of the Litigation against Defendants could result in a judgment greater than this Settlement. Conversely, continuing the case could result in no recovery at all or a recovery that is less than the amount of the Settlement.

Plaintiffs and Lead Counsel believe that this Settlement is fair and reasonable to Settlement Class Members. They have reached this conclusion for several reasons. Specifically, if the Settlement is finally approved, the Settlement Class Members will receive a certain and immediate monetary recovery. Additionally, Lead Counsel believes that the significant and immediate benefits of the Settlement, when weighed against the significant risk, delay, and uncertainty of continued litigation, are a very favorable result for the Settlement Class.

Defendants are entering into this Settlement because it would be beneficial to avoid the burden, inconvenience, and expense associated with continuing the Litigation, and the uncertainty and risks inherent in any litigation. Defendants have determined that it is desirable and beneficial to them that the Litigation be settled in the manner and upon the terms and conditions set forth in the Stipulation.

### **WHO REPRESENTS THE SETTLEMENT CLASS?**

The following attorneys are counsel for the Settlement Class:

ELLEN GUSIKOFF STEWART  
ROBBINS GELLER RUDMAN & DOWD LLP  
655 West Broadway, Suite 1900  
San Diego, CA 92101  
Telephone: 800/449-4900  
settlementinfo@rgrdlaw.com

If you have any questions about the Litigation, or the Settlement, you are entitled to consult with Lead Counsel by contacting counsel at the phone number or e-mail listed above.

You may obtain a copy of the Stipulation by contacting the Claims Administrator at:

*Miller Energy Securities Litigation Settlement*  
c/o Gilardi & Co., LLC  
P.O. Box 43354  
Providence, RI 02940-3354  
Telephone: 1-866-684-3885  
[www.MillerEnergySecuritiesLitigation.com](http://www.MillerEnergySecuritiesLitigation.com)

## HOW WILL THE PLAINTIFFS' LAWYERS BE PAID?

Lead Counsel will file a motion for an award of attorneys' fees and expenses that will be considered at the Settlement Hearing. Lead Counsel was assisted by the firms of Barrett Johnston Martin & Garrison, LLC, who appeared as Local Counsel in the case, Lowenstein Sandler LLP, which served as Plaintiffs' bankruptcy counsel, and the Law Offices of Curtis V. Trinko (collectively, "Plaintiffs' Counsel"). Lead Counsel will apply for an attorneys' fee award on behalf of Plaintiffs' Counsel in the amount of up to thirty-three percent (33%) of the Settlement Amount, plus payment of Plaintiffs' Counsel's charges and expenses incurred in connection with this Litigation in an amount not to exceed \$850,000, including any award(s) to Plaintiffs of no more than \$15,000 each pursuant to 15 U.S.C. §77z-1(a)(4) in connection with their representation of the Settlement Class. Such sums as may be approved by the Court will be paid from the Settlement Fund. Settlement Class Members are not personally liable for any such fees or expenses.

The attorneys' fees and charges and expenses requested will be the only payment to Plaintiffs' Counsel for their efforts in achieving this outstanding Settlement and for their risk in undertaking this representation on a wholly contingent basis. The fees requested will compensate Plaintiffs' Counsel for their work in achieving the Settlement. The Court will decide what constitutes a reasonable fee award and may award less than the amount requested by Lead Counsel.

## HOW DO I EXCLUDE MYSELF FROM THE SETTLEMENT?

You may request to be excluded from the Settlement Class. To do so, you must mail a written request stating that you wish to be excluded from the Settlement Class to:

*Miller Energy Securities Litigation Settlement*  
c/o Gilardi & Co., LLC  
P.O. Box 43354  
Providence, RI 02940-3354

The request for exclusion must state: (1) your name, address, and telephone number; (2) all purchases, acquisitions, and sales of Miller Energy's Series C and/or Series D Preferred Stock, on or after February 13, 2013, including the dates and prices of each purchase, acquisition or sale, and the amount of Miller Energy Series C and/or Series D Preferred Stock purchased, otherwise acquired or sold; and (3) that you wish to be excluded from the Settlement Class. ***YOUR EXCLUSION REQUEST MUST BE RECEIVED ON OR BEFORE \_\_\_\_\_, 2023.*** If you submit a valid and timely request for exclusion, you shall have no rights under the Settlement, shall not share in the distribution of the Net Settlement Fund, and shall not be bound by the Stipulation or the Judgment.

If you exclude yourself from the Settlement Class, you should understand that the Defendants and the other Released Defendant Parties will have the right to assert any and

all defenses they may have to any claims that you may seek to assert, including, without limitation, the defense that any such claims are untimely under the applicable statutes of limitations or statutes of repose.

Excluding yourself from the Settlement Class is the only option that allows you to be part of any other current or future lawsuit against Defendants or any of the other Released Defendant Parties concerning the Released Claims. Please note, however, that if you decide to exclude yourself from the Settlement Class, you may be time-barred from asserting the claims covered by the Litigation by applicable statutes of limitations or statutes of repose.

### **CAN I OBJECT TO THE SETTLEMENT, THE REQUESTED ATTORNEYS' FEES, AND/OR THE REQUESTED PAYMENT OF EXPENSES?**

Yes. If you are a Settlement Class Member and do not exclude yourself from the Settlement Class, you may object to the terms of the Settlement. Whether or not you object to the terms of the Settlement, you may also object to the requested attorneys' fees, charges, and expenses, and/or Plaintiffs' request for an award for representing the Settlement Class. In order for any objection to be considered, you must file a written statement, accompanied by proof of Settlement Class membership, with the Court and send a copy to Lead Counsel, at the address listed below **by \_\_\_\_\_, 2023**. Lead Counsel will forward copies of the objection to Defendants' Counsel. Any objections must: (a) state the name, address, and telephone number of the objector and must be signed by the objector even if represented by counsel; (b) state that the objector is objecting to the proposed Settlement or application for attorneys' fees or expenses in this Litigation; (c) state the objection(s) and the specific reasons for each objection, including any legal and evidentiary support the objector wishes to bring to the Court's attention; (d) state whether the objection applies only to the objector, to a subset of the Settlement Class or to the entire Settlement Class; (e) include documents sufficient to prove the objector's membership in the Settlement Class, such as the number of shares of Miller Energy's Series C and/or Series D Preferred Stock purchased or otherwise acquired on or after February 13, 2013, as well as the dates and prices of each such purchase or acquisition; (f) state whether the objector intends to appear at the Settlement Hearing and if the objector intends to appear at the Settlement Hearing through counsel; (g) state the identity of all attorneys who will appear on the objector's behalf at the Settlement Hearing, identify all of the witnesses they may call to testify, and provide copies of exhibits that the objector intends to present at the Settlement Hearing; and (h) state that the objector submits to the jurisdiction of the Court with respect to the objection or request to be heard and the subject matter of the Settlement of the Litigation, including, without limitation, enforcement of the terms of the Settlement. The Court's address is Morgan County Courthouse, 415 North Kingston Street, Wartburg, TN 37887; Lead Counsel's address is Robbins Geller Rudman & Dowd LLP, 655 West Broadway, Suite 1900, San Diego, CA 92101, c/o Ellen Gusikoff Stewart. Attendance at the Settlement Hearing is not necessary; however, persons wishing to be heard orally at the Settlement



Hearing are required to indicate in their written objection their intention to appear at the Settlement Hearing and identify any witnesses they may call to testify and exhibits, if any, they intend to introduce into evidence.

## **WHAT ARE MY RIGHTS AND OBLIGATIONS UNDER THE SETTLEMENT?**

If you are a Settlement Class Member and you do not exclude yourself from the Settlement Class, you may receive the benefit of, and you will be bound by, the terms of the Settlement described in this Notice, upon approval by the Court.

## **HOW CAN I GET A PAYMENT?**

In order to qualify for a payment, you must timely complete and return the Proof of Claim which accompanies this Notice. You may also download a Proof of Claim or submit a Proof of Claim online at [www.MillerEnergySecuritiesLitigation.com](http://www.MillerEnergySecuritiesLitigation.com).

## **WHAT CLAIMS WILL BE RELEASED BY THE SETTLEMENT?**

If the Settlement is approved by the Court, the Court will enter a Judgment. If the Judgment becomes Final pursuant to the terms of the Stipulation, all Settlement Class Members shall be deemed to have, and by operation of the Final Judgment shall have, fully, finally, and forever released, relinquished, and discharged any and all of the Released Defendant Parties from all Released Claims.

- “Released Claims” means any and all complaints, claims, third-party claims, cross-claims, counterclaims, demands, allegations, liabilities, obligations, promises, agreements, controversies, actions, causes of action, suits, rights, damages, costs, losses, debts, penalties, fines, charges, and expenses (including the attorneys’ fees, expert fees, and disbursements of counsel and other professionals) of any and every nature whatsoever, whether in law or in equity, whether arising under federal, state, local, or foreign statutory or common law or any other law, rule, or regulation (whether foreign or domestic), whether currently known or unknown, fixed or contingent, suspected or unsuspected, foreseen or unforeseen, ripened or unripened, accrued or unaccrued, liquidated or unliquidated, or matured or not matured, whether arising in equity or under the law of contract, tort, malpractice, statutory breach, or any other legal right or duty, whether direct, class, individual, representative, or in any other capacity, and to the fullest extent that the law permits their release in this lawsuit, that Plaintiffs, or any other member of the Settlement Class could have asserted against Released Defendant Parties in the Litigation or in any forum that arise out of, relate to, are connected with, or in any way concern (a) the allegations, transactions, facts, matters, occurrences, representations, or omissions involved, set forth, alleged, or referred to in the Litigation, and that (b) arise out of, are based

upon, or relate to in any way, to the purchase or acquisition of Miller Energy's Series C and/or Series D Preferred Stock. Released Claims only apply to Released Parties and do not include: (i) claims asserted in *Cosby v. KPMG, LLP*, No. 3:16-CV-121 (E.D. Tenn.), or (ii) claims to enforce the Settlement.

- “Released Defendant Parties” means Settling Defendants, Defendants’ Counsel, and each of their respective predecessors, successors, parent corporations, sister corporations, past, present, or future subsidiaries, affiliates, related companies, principals, assigns, assignors, heirs, legatees, devisees, executors, administrators, estates, spouses, immediate family members, receivers and trustees, settlors, beneficiaries, officers, directors, employees, servants, agents, partners, insurers, reinsurers, representatives, attorneys, legal representatives, and successors-in-interest, and any entity in which the Released Defendant Parties have or had a controlling interest.
- “Released Plaintiff Parties” means each and every Settlement Class Member, Plaintiffs, Plaintiffs’ Counsel, and each of their respective past or present trustees, officers, directors, partners, employees, affiliates, contractors, auditors, principals, agents, attorneys, predecessors, successors, assigns, insurers, parents, subsidiaries, general or limited partners or partnerships, and limited liability companies; and the spouses, members of the immediate families, representatives, and heirs of any Released Plaintiff Party (in their capacity as such) who is an individual, as well as any trust of which any Released Plaintiff Party is the settlor or which is for the benefit of any of their immediate family members. Released Plaintiff Parties does not include any Person who timely and validly seeks exclusion from the Settlement Class.
- “Released Parties” means Released Defendant Parties and Released Plaintiff Parties.
- “Settling Defendants” means those Defendants who have executed the Stipulation, either themselves or through counsel.
- “Unknown Claims” means: (a) any Released Claims that Plaintiffs or any Settlement Class Member does not know or suspect to exist in his, her, or its favor at or after, as applicable, the time he, she or it enters into the Stipulation, or at or after the release of the Released Defendant Parties (pursuant to the terms of the Stipulation) which, if known by him, her, or it, might have affected his, her, or its settlement with and release of the Released Defendant Parties, or might have affected his, her, or its decision not to object to or opt out of this Settlement; and (b) any Released Defendants’ Claims that Released Defendant Parties do not know or suspect to exist in his, her, or its favor at or after the time of the release of the Released Plaintiff Parties



(pursuant to the terms of the Stipulation), which if known by him, her, or it, might have affected his, her, or its settlement with and release of the Released Plaintiff Parties. With respect to any and all Released Claims and Released Defendants' Claims, the Settling Parties stipulate and agree that, upon the Effective Date, they shall expressly waive and relinquish, and each of the Settlement Class Members shall be deemed to have waived, and by operation of the Judgment shall have expressly waived and relinquished any and all provisions, rights, and benefits conferred by California Civil Code §1542 or the law of the United States or any state or territory of the United States, or other jurisdiction or principle of common law or foreign law that is similar, comparable, or equivalent to California Civil Code §1542, which provides:

**A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.**

Settling Parties and/or a Settlement Class Member may hereafter discover facts in addition to or different from those which he, she or it now knows or believes to be true with respect to the subject matter of the Released Claims and Released Defendants' Claims, but Settling Parties upon the Effective Date shall expressly fully, finally, and forever settle and release, and each Settlement Class Member, upon the Effective Date, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever settled and released, any and all Released Claims and Released Defendants' Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct which is negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts. Settling Parties acknowledge, and Settlement Class Members shall be deemed by operation of law (including by operation of the Judgment) to have acknowledged, that the foregoing waiver and inclusion of Unknown Claims in the definition of Released Claims were separately bargained for and are a key element of the Settlement of which this release is a part.

## **THE SETTLEMENT HEARING**

The Court will hold a Settlement Hearing, which the Court may require or permit to be conducted as a telephonic or video hearing in light of the ongoing exigent circumstances caused by the COVID-19 pandemic, on \_\_\_\_\_, 2023, at \_\_\_\_\_.m., before the

Honorable Michael S. Pemberton at the Circuit Court for Morgan County, Ninth Judicial District in the State of Tennessee, Morgan County Courthouse, 415 North Kingston Street, Wartburg, TN 37887, for the purpose of determining whether: (1) the Settlement as set forth in the Stipulation for \$7,600,000 in cash should be approved by the Court as fair, reasonable, and adequate; (2) the Settlement Class should be finally certified pursuant to Rules 23.01 and 23.02(3) of the Tennessee Rules of Civil Procedure for purposes of settlement only; (3) Judgment as provided under the Stipulation should be entered; (4) to award Lead Counsel attorneys' fees and expenses out of the Settlement Fund and, if so, in what amount; (5) to award Plaintiffs an amount in connection with their representation of the Settlement Class out of the Settlement Fund and, if so, in what amount; and (6) the Plan of Allocation should be approved by the Court. The Court may adjourn or continue the Settlement Hearing without further notice to Settlement Class Members.

Any Settlement Class Member may appear at the Settlement Hearing and be heard on any of the foregoing matters; provided, however, that no such person shall be heard unless his, her, or its objection is made in writing and is filed, together with proof of membership in the Settlement Class and with copies of all other papers and briefs to be submitted by him, her, or it to the Court at the Settlement Hearing, with the Court no later than \_\_\_\_\_, 2023, and showing proof of service on the following counsel:

Ellen Gusikoff Stewart  
ROBBINS GELLER RUDMAN  
& DOWD LLP  
655 West Broadway, Suite 1900  
San Diego, CA 92101

*Attorney for Plaintiffs*

In light of the ongoing exigent circumstances caused by the COVID-19 pandemic, **the Court may require or permit attendance at the Settlement Hearing by telephone.** If the Court requires or permits telephonic participation in the Settlement Hearing, the dial-in number for the Settlement Hearing will be posted on [www.MillerEnergySecuritiesLitigation.com](http://www.MillerEnergySecuritiesLitigation.com). Settlement Class Members who intend to appear at the Settlement Hearing are advised to visit [www.MillerEnergySecuritiesLitigation.com](http://www.MillerEnergySecuritiesLitigation.com) for updates.

Unless otherwise directed by the Court, any Settlement Class Member who does not make his, her, or its objection in the manner provided shall be deemed to have waived all objections to this Settlement and shall be foreclosed from raising (in this or any other proceeding or on any appeal) any objection and any untimely objection shall be barred.

If you hire an attorney (at your own expense) to represent you for purposes of objecting, your attorney must serve a notice of appearance on counsel listed above and file it with the Court (at the address set out above) by no later than \_\_\_\_\_, 2023.

## **INJUNCTION**

The Court has issued an order enjoining all Settlement Class Members from instituting, commencing, maintaining, or prosecuting any action in any court or tribunal that asserts Released Claims against any Released Defendant Parties, pending final determination by the Court of whether the Settlement should be approved.

## **HOW DO I OBTAIN ADDITIONAL INFORMATION?**

This Notice contains only a summary of the terms of the proposed Settlement. The records in this Litigation may be examined and copied at any time during regular office hours, and subject to customary copying fees, at the Clerk of the Circuit Court for Morgan County, Ninth Judicial District in the State of Tennessee. In addition, all of the Settlement documents, including the Stipulation, this Notice and proposed Judgment may be obtained by contacting the Claims Administrator at:

*Miller Energy Securities Litigation Settlement*  
c/o Gilardi & Co., LLC  
P.O. Box 43354  
Providence, RI 02940-3354  
Telephone: 1-866-684-3885  
[www.MillerEnergySecuritiesLitigation.com](http://www.MillerEnergySecuritiesLitigation.com)

In addition, you may contact Greg Wood, Shareholder Relations, Robbins Geller Rudman & Dowd LLP, 655 West Broadway, Suite 1900, San Diego, CA 92101, 1-800-449-4900, [settlementinfo@rgrdlaw.com](mailto:settlementinfo@rgrdlaw.com), if you have any questions about the Litigation or the Settlement.

## **DO NOT WRITE TO OR TELEPHONE THE COURT FOR INFORMATION**

## **SPECIAL NOTICE TO BANKS, BROKERS, AND OTHER NOMINEES**

If you hold any Miller Energy's Series C and/or Series D Preferred Stock, as a nominee for a beneficial owner, then, within seven (7) calendar days after you receive this Notice, you must either: (1) send a copy of this Notice by First-Class Mail to all such Persons; or (2) provide a list of the names and addresses of such Persons to the Claims Administrator:

*Miller Energy Securities Litigation Settlement*  
c/o Gilardi & Co., LLC  
P.O. Box 43354  
Providence, RI 02940-3354  
Telephone: 1-866-684-3885  
www.MillerEnergySecuritiesLitigation.com

If you choose to mail the Notice yourself, you may obtain from the Claims Administrator (without cost to you) as many additional copies of these documents as you will need to complete the mailing.

Regardless of whether you choose to complete the mailing yourself or elect to have the mailing performed for you, you may obtain reimbursement for or advancement of reasonable administrative costs actually incurred or expected to be incurred in connection with forwarding the Notice and which would not have been incurred but for the obligation to forward the Notice, upon submission of appropriate documentation to the Claims Administrator.

DATED: \_\_\_\_\_

BY ORDER OF THE CIRCUIT COURT FOR  
MORGAN COUNTY,  
NINTH JUDICIAL DISTRICT IN THE  
STATE OF TENNESSEE

# EXHIBIT A-2



## I. GENERAL INSTRUCTIONS

1. To recover as a member of the Settlement Class based on your claims in the actions entitled *Goldberg v. Miller, et al.*, Case No. 2015-cv-33 and *Gaynor v. Miller, et al.*, Case No. 2015-cv-34 (the “Litigation”), you must complete and, on page \_\_\_ hereof, sign this Proof of Claim and Release (“Proof of Claim” or “Claim Form”). If you fail to submit a properly addressed (as set forth in paragraph 3 below) Proof of Claim, postmarked or received by the date shown below, your claim may be rejected and you may be precluded from any recovery from the Net Settlement Fund created in connection with the proposed settlement of the Litigation (the “Settlement”).<sup>1</sup>

2. Submission of this Proof of Claim, however, does not assure that you will share in the proceeds of the Settlement.

3. YOU MUST MAIL OR SUBMIT ONLINE YOUR COMPLETED AND SIGNED PROOF OF CLAIM, ACCOMPANIED BY COPIES OF THE DOCUMENTS REQUESTED HEREIN, NO LATER THAN \_\_\_\_\_, 2023, TO THE COURT-APPOINTED CLAIMS ADMINISTRATOR IN THIS CASE, AT THE FOLLOWING ADDRESS:

*Miller Energy Securities Litigation Settlement*  
Claims Administrator  
c/o Gilardi & Co. LLC  
P.O. Box 43354  
Providence, RI 02940-3354  
Online Submissions: [www.MillerEnergySecuritiesLitigation.com](http://www.MillerEnergySecuritiesLitigation.com)

If you are NOT a member of the Settlement Class (as defined in the Notice of Pendency of Class Action, Proposed Class Action Settlement, and Motion for Attorneys’ Fees and Expenses (the “Notice”)), DO NOT submit a Proof of Claim or direct a third party to file one on your behalf.

---

<sup>1</sup> This Proof of Claim incorporates by reference the definitions in the Stipulation and Agreement of Settlement (“Stipulation”), which can be obtained at [www.MillerEnergySecuritiesLitigation.com](http://www.MillerEnergySecuritiesLitigation.com).

4. If you are a member of the Settlement Class and you did not timely request exclusion from the Settlement Class, you will be bound by the terms of any judgment entered in the Litigation, including the releases provided therein, **WHETHER OR NOT YOU SUBMIT A PROOF OF CLAIM.**

5. It is important that you completely read and understand the Notice that accompanies this Claim Form, including the proposed Settlement and Plan of Allocation, set forth in the Notice. The Notice describes the proposed Settlement, how Settlement Class Members are affected by the Settlement, and the manner in which the Net Settlement Fund will be distributed if the Settlement and Plan of Allocation are approved by the Court. By signing and submitting this Claim Form, you will be certifying that you have read and that you understand the Notice, including the terms of the releases described therein and provided for herein.

## **II. CLAIMANT IDENTIFICATION**

You are a member of the Settlement Class if you purchased or otherwise acquired Miller Energy's Series C and/or Series D Preferred Stock on or after February 13, 2013, and were damaged thereby. Excluded from the Settlement Class are: all Defendants in these actions and their families, the officers and directors and affiliates of Defendants, at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns, and any entity in which Defendants have or had a controlling interest. Also excluded from the Settlement Class is bankrupt Miller Energy Resources, Inc. and its successors and assigns, including Glacier Oil & Gas Corporation, as well as Williams Financial Group, and Paul W. Boyd. Also excluded from the Settlement Class is any Settlement Class Member that validly and timely requests exclusion in accordance with the requirements set by the Court.

Use Part I of this form entitled "Claimant Identification" to identify each purchaser or acquirer of record ("nominee"), if different from the beneficial purchaser or acquirer of the Miller



Energy Preferred Stock which form the basis of this claim. THIS CLAIM MUST BE FILED BY THE ACTUAL BENEFICIAL PURCHASER(S) OR ACQUIRER(S) OR THE LEGAL REPRESENTATIVE OF SUCH PURCHASER(S) OR ACQUIRER(S) OF THE MILLER ENERGY PREFERRED STOCK UPON WHICH THIS CLAIM IS BASED.

All joint purchasers or acquirers must sign this claim. Executors, administrators, guardians, conservators and trustees must complete and sign this claim on behalf of persons represented by them and their authority must accompany this claim and their titles or capacities must be stated. The Social Security (or taxpayer identification) number and telephone number of the beneficial owner may be used in verifying the claim. Failure to provide the foregoing information could delay verification of your claim or result in rejection of the claim.

If you are acting in a representative capacity on behalf of a Settlement Class Member (for example, as an executor, administrator, trustee, or other representative), you must submit evidence of your current authority to act on behalf of that Settlement Class Member. Such evidence would include, for example, letters testamentary, letters of administration, or a copy of the trust documents.

A claim should be submitted for each separate legal entity (*e.g.*, a claim form of joint owners should not include separate transactions of just one of the joint owners, and an individual should not combine his or her IRA transactions with transactions made solely in the individual's name). Conversely, a single Claim Form should be submitted on behalf of one legal entity including all transactions made by that entity on one Claim Form, no matter how many separate accounts that entity has (*e.g.*, a corporation with multiple brokerage accounts should include all transactions made in all accounts on one Claim Form).

NOTICE REGARDING ELECTRONIC FILES: Certain claimants with large numbers of transactions may request to, or may be requested to, submit information regarding their

transactions in electronic files. All claimants **MUST** submit a manually signed paper Proof of Claim listing all their transactions whether or not they also submit electronic copies. If you wish to file your claim electronically, you must contact the Claims Administrator at [edata@gilardi.com](mailto:edata@gilardi.com) to obtain the required file layout. No electronic files will be considered to have been properly submitted unless the Claims Administrator issues to the claimant a written acknowledgement of receipt and acceptance of electronically submitted data.

### **III. CLAIM FORM**

Use Part II of this form entitled “Schedule of Transactions in Miller Energy Series C and/or Series D Preferred Stock,” to supply all required details of your transaction(s) in Miller Energy Preferred Stock. If you need more space or additional schedules, attach separate sheets giving all of the required information in substantially the same form. Sign and print or type your name on each additional sheet.

On the schedules, provide all of the requested information with respect to ***all*** of your purchases and acquisitions and ***all*** of your sales of Miller Energy Series C and/or Series D Preferred Stock between February 13, 2013 and November 9, 2015, inclusive, whether such transactions resulted in a profit or a loss. You must also provide all of the requested information with respect to ***all*** of the shares of Miller Energy Series C and/or Series D Preferred Stock you held at the close of trading on November 9, 2015. Failure to report all such transactions may result in the rejection of your claim.

List these transactions separately and in chronological order, by trade date, beginning with the earliest. You must accurately provide the month, day and year of each transaction you list.

For each transaction, you must provide, together with this Claim Form, copies of stockbroker confirmation slips, stockbroker statements, or other documents adequately evidencing your transactions in Miller Energy Preferred Stock. If any such documents are not in your

possession, please obtain a copy or equivalent documents from your broker because these documents are necessary to prove and process your claim. Failure to provide this documentation could delay verification of your claim or result in rejection of your claim.

IN THE CIRCUIT COURT FOR MORGAN COUNTY  
NINTH JUDICIAL DISTRICT  
THE STATE OF TENNESSEE

*Goldberg v. Miller, et al.,*  
Case No. 2015-cv-33

*Gaynor v. Miller, et al.,*  
Case No. 2015-cv-34

PROOF OF CLAIM AND RELEASE

Must Be Postmarked (if mailed) or Received (if submitted online) No Later Than:

\_\_\_\_\_, 2023

Please Type or Print

**REMEMBER TO ATTACH COPIES OF BROKER CONFIRMATIONS OR  
OTHER DOCUMENTATION OF YOUR TRANSACTIONS IN MILLER ENERGY  
PREFERRED STOCK. FAILURE TO PROVIDE THIS DOCUMENTATION COULD  
DELAY VERIFICATION OF YOUR CLAIM OR RESULT IN REJECTION OF YOUR  
CLAIM.**

**PART I: CLAIMANT IDENTIFICATION**

Last Name  M.I.  First Name

Last Name (Co-Beneficial Owner)  M.I.  First Name (Co-Beneficial Owner)

IRA  Joint Tenancy  Employee  Individual  Other \_\_\_\_\_ (specify)

Company Name (Beneficial Owner - If Claimant is not an Individual) or Custodian Name if an IRA

Trustee/Asset Manager/Nominee/Record Owner's Name (If Different from Beneficial Owner Listed Above)

Account#/Fund# (Not Necessary for Individual Filers)

Social Security Number  -  -  or Taxpayer Identification Number  -  -

Telephone Number (Primary Daytime)  -  -  Telephone Number (Alternate)  -  -

Email Address

**MAILING INFORMATION**

Address

Address

City  State  Zip Code

Foreign Province  Foreign Postal Code  Foreign Country Name/Abbreviation

If you require additional space, attach extra schedules in the same format as above. Sign and print your name on each additional page.

**YOU MUST READ AND SIGN THE RELEASE ON PAGE \_\_\_\_\_. FAILURE TO SIGN THE RELEASE MAY RESULT IN A DELAY IN PROCESSING OR THE REJECTION OF YOUR CLAIM.**

PART II: SCHEDULE OF TRANSACTIONS IN MILLER ENERGY SERIES C AND/OR SERIES D PREFERRED STOCK

A. Purchases or acquisitions of Miller Energy Series C and/or Series D Preferred Stock between February 13, 2013 through November 9, 2015, inclusive:

PURCHASES			
Trade Date(s) of Shares (List Chronologically)	Number of Shares Purchased or Acquired	Total Purchase or Acquisition Price (Excluding Commissions, Taxes and Fees) Please round off to the nearest whole dollar	Proof of Purchase Enclosed?
M M / D D / Y Y Y Y			
1. <input type="text"/> / <input type="text"/> / <input type="text"/>	<input type="text"/>	\$ <input type="text"/> .00	<input type="radio"/> Y <input type="radio"/> N
2. <input type="text"/> / <input type="text"/> / <input type="text"/>	<input type="text"/>	\$ <input type="text"/> .00	<input type="radio"/> Y <input type="radio"/> N
3. <input type="text"/> / <input type="text"/> / <input type="text"/>	<input type="text"/>	\$ <input type="text"/> .00	<input type="radio"/> Y <input type="radio"/> N
4. <input type="text"/> / <input type="text"/> / <input type="text"/>	<input type="text"/>	\$ <input type="text"/> .00	<input type="radio"/> Y <input type="radio"/> N
5. <input type="text"/> / <input type="text"/> / <input type="text"/>	<input type="text"/>	\$ <input type="text"/> .00	<input type="radio"/> Y <input type="radio"/> N

IMPORTANT: (i) If any purchase listed covered a "short sale," please mark Yes:  Yes  
(ii) If you received shares through an acquisition or merger, please identify the date, the share amount and the company acquired:

<input type="text"/> / <input type="text"/> / <input type="text"/>	<input type="text"/>	<input type="text"/>
Mo. Day Year	Merger Shares	Company

B. Sales of Miller Energy Series C and/or Series D Preferred Stock between February 13, 2013 through November 9, 2015, inclusive :

SALES			
Trade Date(s) of Shares (List Chronologically)	Number of Shares Sold	Total Sales Price (Excluding Commissions, Taxes and Fees) Please round off to the nearest whole dollar	Proof of Sales Enclosed?
M M / D D / Y Y Y Y			
1. <input type="text"/> / <input type="text"/> / <input type="text"/>	<input type="text"/>	\$ <input type="text"/> .00	<input type="radio"/> Y <input type="radio"/> N
2. <input type="text"/> / <input type="text"/> / <input type="text"/>	<input type="text"/>	\$ <input type="text"/> .00	<input type="radio"/> Y <input type="radio"/> N
3. <input type="text"/> / <input type="text"/> / <input type="text"/>	<input type="text"/>	\$ <input type="text"/> .00	<input type="radio"/> Y <input type="radio"/> N
4. <input type="text"/> / <input type="text"/> / <input type="text"/>	<input type="text"/>	\$ <input type="text"/> .00	<input type="radio"/> Y <input type="radio"/> N

C. Number of shares of Miller Energy Series C and/or Series D Preferred Stock held at the close of trading on November 9, 2015:

Proof Enclosed?

--	--	--	--	--	--	--	--

○ Y  
○ N

If you require additional space, attach extra schedules in the same format as above. Sign and print your name on each additional page.

**YOU MUST READ AND SIGN THE RELEASE ON PAGE \_\_. FAILURE TO SIGN THE RELEASE MAY RESULT IN A DELAY IN PROCESSING OR THE REJECTION OF YOUR CLAIM.**

**IV. SUBMISSION TO JURISDICTION OF COURT AND ACKNOWLEDGMENTS**

I (We) submit this Proof of Claim under the terms of the Stipulation described in the Notice. I (We) also submit to the jurisdiction of the Circuit Court for Morgan County, Ninth Judicial District, State of Tennessee with respect to my (our) claim as a Settlement Class Member and for purposes of enforcing the releases set forth herein. I (We) further acknowledge that I am (we are) bound by and subject to the terms of the Stipulation and any judgment that may be entered in the Litigation, including the releases and the covenants set forth herein. I (We) agree to furnish additional information to the Claims Administrator to support this claim if requested to do so. I (We) have not submitted any other claim in connection with the purchase or acquisition of Miller Energy Series C and/or Series D Preferred Stock during the relevant period and know of no other person having done so on my our) behalf.

**V. RELEASES**

1. I (We) hereby acknowledge full and complete satisfaction of, and do hereby fully, finally, and forever settle, release, and discharge from the Released Claims each and all of the Released Defendant Parties.

2. “Released Defendant Parties” means Settling Defendants, Defendants’ Counsel, and each of their predecessors, successors, parent entities, sister entities, past, present, or future subsidiaries, affiliates, related companies, shareholders, principals, assigns, assignors, heirs, legatees, devisees, executors, administrators, estates, spouses, immediate family members, receivers and trustees, settlors, beneficiaries, officers, directors, employees, servants, agents, partners, insurers, reinsurers, representatives, attorneys, legal representatives, and successors-in-interest and any entity in which the Released Defendant Parties have or had a controlling interest.

3. “Settling Defendants” means those Defendants who have executed the Stipulation, either themselves or through counsel.

4. “Settling Parties” means Plaintiffs and Settling Defendants.

5. “Released Claims” means any and all complaints, claims, third-party claims, cross-claims, counterclaims, demands, allegations, liabilities, obligations, promises, agreements, controversies, actions, causes of action, suits, rights, damages, costs, losses, debts, penalties, fines, charges, and expenses (including the attorneys’ fees, expert fees, and disbursements of counsel and other professionals) of any and every nature whatsoever, whether in law or in equity, whether arising under federal, state, local, or foreign statutory or common law, or any other law, rule, or regulation (whether foreign or domestic), whether currently known or unknown, fixed or contingent, suspected or unsuspected, foreseen or unforeseen, ripened or unripened, accrued or unaccrued, liquidated or unliquidated, or matured or not matured, whether arising in equity or under the law of contract, tort, malpractice, statutory breach, or any other legal right or duty, whether direct, class, individual, representative, or in any other capacity, and to the fullest extent that the law permits their release in this lawsuit, that Plaintiffs, or any other member of the Settlement Class could have asserted against Released Defendant Parties in the Litigation or in any forum that arise out of, relate to, are connected with, or in any way concern (a) the allegations,



transactions, facts, matters, occurrences, representations, or omissions involved, set forth, alleged, or referred to in the Litigation, and that (b) arise out of, are based upon, or relate to in any way, the purchase or acquisition of Miller Energy's Series C and/or Series D Preferred Stock. Released Claims only apply to Released Parties and do not include: (i) claims asserted in *Cosby v. KPMG, LLP*, No. 3:16-cv-1210 (E.D. Tenn.), or (b) claims to enforce the Settlement.

6. "Unknown Claims" means: (a) any Released Claims that Plaintiffs or any Settlement Class Member does not know or suspect to exist in his, her, or its favor at or after, as applicable, the time he, she or it enters into the Stipulation, or at or after the release of the Released Defendant Parties (pursuant to the terms of the Stipulation) which, if known by him, her, or it, might have affected his, her, or its settlement with and release of the Released Defendant Parties, or might have affected his, her, or its decision not to object to or opt out of this Settlement; and (b) any Released Defendants' Claims that Released Defendant Parties do not know or suspect to exist in his, her, or its favor at or after the time of the release of the Released Plaintiff Parties (pursuant to the terms of the Stipulation), which if known by him, her, or it, might have affected his, her, or its settlement with and release of the Released Plaintiff Parties. With respect to any and all Released Claims and Released Defendants' Claims, the Settling Parties stipulate and agree that, upon the Effective Date, they shall expressly waive and relinquish, and each of the Settlement Class Members shall be deemed to have waived, and by operation of the Judgment shall have expressly waived and relinquished any and all provisions, rights, and benefits conferred by California Civil Code §1542 or the laws of the United States or any state or territory of the United States, or other jurisdiction or principle of common law or foreign law that is similar, comparable, or equivalent to California Civil Code §1542, which provides:

**A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing**

**the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.**

Settling Parties and/or a Settlement Class Member may hereafter discover facts in addition to or different from those which he, she or it now knows or believes to be true with respect to the subject matter of the Released Claims and Released Defendants' Claims, but Settling Parties upon the Effective Date shall expressly fully, finally, and forever settle and release, and each Settlement Class Member, upon the Effective Date, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever settled and released, any and all Released Claims and Released Defendants' Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct which is negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts. Settling Parties acknowledge, and Settlement Class Members shall be deemed by operation of law (including by operation of the Judgment) to have acknowledged, that the foregoing waiver and inclusion of Unknown Claims in the definition of Released Claims were separately bargained for and are a key element of the Settlement of which this release is a part.

7. These releases shall be of no force or effect unless and until the Court approves the Stipulation and the Settlement becomes effective on the Effective Date.

8. I (We) hereby warrant and represent that I (we) have not assigned or transferred or purported to assign or transfer, voluntarily or involuntarily, any claim or matter released pursuant to this release or any other part or portion thereof.

9. I (We) hereby warrant and represent that I (we) have included information about all of my (our) purchases, acquisitions and sales of Miller Energy Series C and/or Series D

Preferred Stock during the relevant period and the number of shares of Miller Energy Preferred Stock held by me (us) at the close of trading on November 9, 2015.

I (We) declare under penalty of perjury under the laws of the State of Tennessee that the foregoing information supplied by the undersigned is true and correct and that the Claimant has not previously entered into any settlement agreement or provided a release of claims to any Settling Defendant relating to or arising from the purchase or other acquisition of Miller Energy Series C and/or Series D Preferred Stock.

Executed this \_\_\_\_\_ day of \_\_\_\_\_ in \_\_\_\_\_  
(Month/Year) (City/State/Country)

\_\_\_\_\_  
(Sign your name here)

\_\_\_\_\_  
(Sign your name here)

\_\_\_\_\_  
(Type or print your name here)

\_\_\_\_\_  
(Type or print your name here)

\_\_\_\_\_  
(Capacity of person(s) signing, e.g.,  
Beneficial Purchaser, Executor or Administrator)

\_\_\_\_\_  
(Capacity of person(s) signing, e.g.,  
Beneficial Purchaser, Executor or Administrator)

**ACCURATE CLAIMS PROCESSING TAKES A SIGNIFICANT AMOUNT OF TIME.  
THANK YOU FOR YOUR PATIENCE.**

**Reminder Checklist:**

1. Please sign the above release and declaration.
2. If this Claim is being made on behalf of Joint Claimants, then both must sign.
3. Remember to attach copies of supporting documentation, if available.
4. **Do not send** originals of certificates.
5. Keep a copy of your claim form and all supporting documentation for your records.
6. If you desire an acknowledgment of receipt of your claim form please send it Certified Mail, Return Receipt Requested.
7. If you move, please send your new address to the address below.
8. **Do not use red pen or highlighter** on the Proof of Claim and Release form or supporting documentation.

**THIS PROOF OF CLAIM MUST BE SUBMITTED ONLINE OR MAILED NO LATER THAN \_\_\_\_\_, 2023,**

**ADDRESSED AS FOLLOWS:**

*Miller Energy Securities Litigation Settlement*  
Claims Administrator  
c/o Gilardi & Co. LLC  
P.O. Box 43354  
Providence, RI 02940-3354  
[www.MillerEnergySecuritiesLitigation.com](http://www.MillerEnergySecuritiesLitigation.com)

# EXHIBIT A-3

IN THE CIRCUIT COURT FOR MORGAN COUNTY  
NINTH JUDICIAL DISTRICT  
THE STATE OF TENNESSEE

MARCIA GOLDBERG, Individually and ) Case No. 2015-CV-33  
on Behalf of All Others Similarly Situated, )  
Plaintiff, ) Judge Pemberton  
vs. )  
DELOY MILLER, et al, )  
Defendants. )

---

KENNETH GAYNOR, Individually and on ) Case No. 2015-CV-34  
Behalf of All Others Similarly Situated, )  
Plaintiff, ) Judge Pemberton  
vs. )  
DELOY MILLER, et al, )  
Defendants. )

---

**SUMMARY NOTICE OF PENDENCY OF CLASS ACTION, PROPOSED CLASS  
ACTION SETTLEMENT, AND MOTION FOR ATTORNEYS' FEES AND  
EXPENSES**

**EXHIBIT A-3**

TO: ALL PERSONS OR ENTITIES WHO PURCHASED OR OTHERWISE ACQUIRED MILLER ENERGY'S 10.75% SERIES C CUMULATIVE REDEEMABLE PREFERRED STOCK ("SERIES C") AND/OR 10.5% SERIES D FIXED RATE/FLOATING CUMULATIVE REDEEMABLE PREFERRED STOCK ("SERIES D") ON OR AFTER FEBRUARY 13, 2013, AND WHO WERE DAMAGED THEREBY

YOU ARE HEREBY NOTIFIED, pursuant to an Order of the Circuit Court for Morgan County, Ninth Judicial District in the State of Tennessee, that a hearing, which the Court may require or permit to be conducted as a telephonic hearing in light of the ongoing exigent circumstances caused by the COVID-19 pandemic, will be held on \_\_\_\_\_, 2023, at \_\_\_\_\_, \_\_.m., before the Honorable Michael S. Pemberton, Circuit Court Judge, at the Circuit Court for Morgan County, Ninth Judicial District in the State of Tennessee, Morgan County Courthouse, 415 North Kingston Street, Wartburg, TN 37887, for the purpose of determining whether: (1) the Settlement as set forth in the Stipulation for \$7,600,000 in cash should be approved by the Court as fair, reasonable, and adequate; (2) the Settlement Class should be finally certified pursuant to Rules 23.01 and 23.02(3) of the Tennessee Rules of Civil Procedure for purposes of settlement only; (3) Judgment as provided under the Stipulation should be entered; (4) to award Lead Counsel attorneys' fees and expenses out of the Settlement Fund and, if so, in what amount; (5) to award Plaintiffs an amount in connection with their representation of the Settlement Class out of the Settlement Fund and, if so, in what amount; and (6) the Plan of Allocation should be approved by the Court. The Court may adjourn or continue the Settlement Hearing without further notice to Settlement Class Members.

Please note that the date, time, and location of the Settlement Hearing are subject to change without further notice. In light of the ongoing exigent circumstances caused by the COVID-19 pandemic, the Court may require or permit attendance at the Settlement Hearing by telephone. If the Court requires or permits telephonic participation in the Settlement Hearing, the dial-in number for the Settlement Hearing will be posted on [www.MillerEnergySecuritiesLitigation.com](http://www.MillerEnergySecuritiesLitigation.com). Settlement Class Members who intend to appear at the Settlement Hearing are advised to visit [www.MillerEnergySecuritiesLitigation.com](http://www.MillerEnergySecuritiesLitigation.com) for updates.

IF YOU PURCHASED OR OTHERWISE ACQUIRED MILLER ENERGY'S SERIES C AND/OR SERIES D PREFERRED STOCK ON OR AFTER FEBRUARY 13, 2013, AND WERE DAMAGED THEREBY, YOUR RIGHTS WILL BE AFFECTED BY THE SETTLEMENT OF THIS LITIGATION.

If you have not received the Notice of Pendency, Proposed Settlement of Class Action, and Motion for Attorneys' Fees and Expenses ("Notice") you may obtain a copy by writing to *Miller Energy Securities Litigation Settlement*, Gilardi & Co., LLC, P.O. Box 43354, Providence, RI 02940-3354, or on the internet at [www.MillerEnergySecuritiesLitigation.com](http://www.MillerEnergySecuritiesLitigation.com).

If you are a Settlement Class Member and you desire to be excluded from the Settlement Class, you must submit a request for exclusion such that it is ***received no later than \_\_\_\_\_, 2023***, in the manner and form explained in the Notice. All Settlement Class Members who do not timely and validly request exclusion from the Settlement Class will



be bound by any judgment entered in the Litigation pursuant to the Stipulation and Agreement of Settlement.

Any objection to the Settlement or the fee and expense application must be mailed to each of the following recipients, *received no later than* \_\_\_\_\_, 2023:

CLERK OF THE COURT  
THE CIRCUIT COURT FOR MORGAN COUNTY,  
NINTH JUDICIAL DISTRICT IN THE  
STATE OF TENNESSEE  
Morgan County Courthouse  
415 North Kingston Street  
Wartburg, TN 37887

*Lead Counsel:*

ROBBINS GELLER RUDMAN  
& DOWD LLP  
ELLEN GUSIKOFF STEWART  
655 West Broadway, Suite 1900  
San Diego, CA 92101

**PLEASE DO NOT CONTACT THE COURT, THE CLERK'S OFFICE, OR DEFENDANTS REGARDING THIS NOTICE.** If you have any questions about the Settlement, you may contact Lead Counsel at the address listed above.

DATED: \_\_\_\_\_, 2023

BY ORDER OF THE COURT  
THE CIRCUIT COURT FOR MORGAN  
COUNTY  
NINTH JUDICIAL DISTRICT IN THE  
STATE OF TENNESSEE

# EXHIBIT B

IN THE CIRCUIT COURT FOR MORGAN COUNTY  
NINTH JUDICIAL DISTRICT  
THE STATE OF TENNESSEE

MARCIA GOLDBERG, Individually and ) Case No. 2015-CV-33  
on Behalf of All Others Similarly Situated, )  
Plaintiff, ) Judge Pemberton  
vs. )  
DELOY MILLER, et al, )  
Defendants. )

---

KENNETH GAYNOR, Individually and on) Case No. 2015-CV-34  
Behalf of All Others Similarly Situated, )  
Plaintiff, ) Judge Pemberton  
vs. )  
DELOY MILLER, et al, )  
Defendants. )

---

**[PROPOSED] FINAL JUDGMENT AND ORDER OF DISMISSAL WITH  
PREJUDICE**

**EXHIBIT B**

WHEREAS, this matter came before the Court pursuant to the Order Preliminarily Approving Settlement Pursuant to Tenn. R. Civ. P. 23.05 and Permitting Notice to the Class (“Order”) dated \_\_\_\_\_, 2023 on the application of Plaintiffs for approval of the proposed settlement of the Litigation with all Settling Defendants and resolving this Litigation as to all Defendants, including: Underwriter Defendants Northland Capital Markets, Dominick & Dominick, LLC (n/k/a Dominick & Dickerman LLC), Ladenburg Thalmann & Co. Inc., I-Bankers Securities, Inc., MLV & Co. LLC, National Securities Corporation, Maxim Group, LLC and Aegis Capital Corporation, and Individual Defendants Deloy Miller, Scott M. Boruff, David J. Voyticky, Catherine A. Rector (n/k/a Catherine Rainey), David M. Hall, Merrill A. McPeak, Gerald Hannahs, Charles M. Stivers, Don A. Turkleson, Bob G. Gower, Joseph T. Leary, William B. Richardson, and Marceau N. Schlumberger (“Settling Defendants”) for a total of \$7,600,000 in cash to resolve all claims in the Litigation against Settling Defendants (“Settlement”) as set forth in the Stipulation and Agreement of Settlement dated January 6, 2023 (“Stipulation”). Due and adequate notice having been given to the Settlement Class as required in the Order, and the Court having considered all papers filed and proceedings had herein and otherwise being fully informed in the premises and good cause appearing therefore, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

1. This Final Judgment and Order of Dismissal with Prejudice (“Judgment”) incorporates by reference: (a) the Stipulation; (b) the Notice of Pendency of Class Action, Proposed Class Action Settlement, and Motion for Attorneys’ Fees and Expenses (“Notice”); and (c) Declaration of the Claims Administrator filed with this Court on

\_\_\_\_\_, 2023. All terms used herein shall have the same meanings as set forth in the Stipulation, unless otherwise set forth herein.

2. This Court has jurisdiction over the subject matter of the Litigation and over all parties to the Litigation, including all Settlement Class Members.

3. Pursuant to Rule 23 of the Tennessee Rules of Civil Procedure, this Court hereby affirms its determinations in the Order and finally certifies for purposes of settlement only, a Settlement Class defined as all persons or entities who purchased or otherwise acquired Miller Energy's Series C and/or Series D Preferred Stock on or after February 13, 2013, and who were damaged thereby. Excluded from the Settlement Class are all Defendants in these actions and their families, the officers and directors and affiliates of Defendants, at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns, and any entity in which Defendants have or had a controlling interest. Also excluded from the Settlement Class is bankrupt Miller Energy Resources, Inc. and its successors and assigns, including Glacier Oil & Gas Corporation; Williams Financial Group; and Paul W. Boyd. Finally, excluded from the Settlement Class are those Persons who timely and validly requested exclusion from the Settlement Class and are listed on Exhibit 1 hereto as having submitted an exclusion request allowed by the Court.

4. This Court hereby affirms its determinations in the Order and finds, for the purposes of the Settlement only, that the prerequisites for a class action under Rules 23.01 and 23.02(3) of the Tennessee Rules of Civil Procedure have been satisfied in that: (a) the number of Settlement Class Members is so numerous that joinder of all members is

impracticable; (b) there are questions of law and fact common to the Settlement Class; (c) the claims of Plaintiffs are typical of the claims of the Settlement Class they seek to represent; (d) Plaintiffs and Plaintiffs' Counsel have and will fairly and adequately represent the interests of the Settlement Class; (e) the questions of law and fact common to Settlement Class Members predominate over any questions affecting only individual Settlement Class Members; and (f) a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

5. Pursuant to Rule 23 of the Tennessee Rules of Civil Procedure, and for purposes of this Settlement only, the Court hereby affirms its determinations in the Order and finally appoints Plaintiffs Kenneth Gaynor, Marcia Goldberg, and Christopher R. Vorrath as Class Representatives for the Settlement Class and Robbins Geller Rudman & Dowd LLP as class counsel for the Settlement Class.

6. The Notice given to the Settlement Class was the best notice practicable under the circumstances, including the individual notice to all Settlement Class Members who could be identified through reasonable effort. The Notice provided the best notice practicable under the circumstances of these proceedings and of the matters set forth therein, including the proposed Settlement set forth in the Stipulation, to all Persons entitled to such notice, and said notice fully satisfied the requirements of the Tennessee Rules of Civil Procedure (including Rules 23.02(3)), the United States Constitution (including the Due Process Clause), the Private Securities Litigation Reform Act of 1995 ("PSLRA"), the rules of this Court, and other applicable law.

7. [There have been \_\_ objections to the Settlement, each of which was addressed by the Court at the Settlement Hearing.]

8. Pursuant to Rule 23 of the Tennessee Rules of Civil Procedure, the Court hereby affirms its determinations in the Order, fully and finally approves the Settlement set forth in the Stipulation in all respects and finds that:

(a) the Stipulation and the Settlement contained therein, are, in all respects, fair, reasonable, and adequate, and in the best interest of the Settlement Class;

(b) there was no collusion in connection with the Settlement;

(c) the Settlement was the product of informed, arm's-length negotiations among competent, able counsel; and

(d) the record is sufficiently developed and complete to have enabled Plaintiffs and Defendants to have adequately evaluated and considered their positions.

9. Accordingly, the Court authorizes and directs implementation and performance of all the terms and provisions of the Stipulation, as well as the terms and provisions hereof. Except as to any individual claim of those Persons (identified in Exhibit 1 attached hereto) who have validly and timely requested exclusion from the Settlement Class, the Court hereby dismisses the Litigation and all Released Claims of the Settlement Class with prejudice. The Settling Parties are to bear their own attorneys' fees and costs, except as and to the extent provided in the Stipulation and herein.

10. The Releases set forth in Section 4 of the Stipulation, together with the definitions contained in the Stipulation relating thereto, are expressly incorporated herein by reference. Accordingly, this Court orders that:

(a) Upon the Effective Date, and as provided in the Stipulation, Plaintiffs shall, and each of the Settlement Class Members shall be deemed to have, and by operation of this Judgment shall have, fully, finally, and forever released, relinquished, and discharged any and all Released Claims against the Released Parties, whether or not such Settlement Class Member executes and delivers a Proof of Claim and Release form or shares in the Settlement Fund. Claims to enforce the terms of the Stipulation are not released.

(b) Plaintiffs and all Settlement Class Members, and anyone claiming through or on behalf of any of them, are hereby forever barred and enjoined from commencing, instituting, prosecuting, or continuing to prosecute any action or other proceeding in any court of law or equity, arbitration tribunal, or administrative forum, asserting any of the Released Claims against any of the Released Parties.

(c) Upon the Effective Date, and as provided in the Stipulation, each of the Released Parties shall be deemed to have, and by operation of this Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Defendants' Claims against Plaintiffs, each and all of the Settlement Class Members, and Plaintiffs' Counsel, except for claims relating to the enforcement of the Settlement.

11. Upon the Effective Date, any and all Persons are permanently barred and enjoined, to the fullest extent permitted by law, from commencing, prosecuting, or asserting any and all claims for contribution or indemnity (or any other claim where the alleged injury to that Person is that Person's actual or threatened liability to the Settlement Class or a Settlement Class Member in the Litigation), whether contractual or otherwise,



arising out of, based upon, relating to, concerning, or in connection with the Released Claims or the Litigation, against each and every one of the Released Parties, whether arising under state, federal, local, common, or foreign law, as claims, cross-claims, counterclaims, or third-party claims, in the Litigation or any separate action, in this Court or in any other court, arbitration proceeding, administrative proceeding, or other forum; and the Released Defendant Parties are permanently barred and enjoined, to the fullest extent permitted by law, from commencing, prosecuting, or asserting any and all claims for contribution or indemnity (or any other claim where the alleged injury to the Released Defendant Party is that Released Defendant Party's actual or threatened liability to the Settlement Class or a Settlement Class Member in the Litigation) arising out of, based upon, relating to, concerning, or in connection with the Released Claims or the Litigation, whether arising under state, federal, local, common, or foreign law, as claims, cross-claims, counterclaims, or third-party claims, in the Litigation or any separate action, in this Court or in any other court, arbitration proceeding, administrative proceeding, or other forum. Notwithstanding the foregoing, nothing herein shall bar any action by any of the Settling Parties to enforce or effectuate the terms of the Stipulation, the Settlement, or the Judgment.

12. Any Plan of Allocation submitted by Lead Counsel or any order entered regarding any attorneys' fees, charges, and expense application or an award to the Plaintiffs shall in no way disturb or affect this Judgment and shall be considered separate from this Judgment.

13. Neither the Stipulation nor the Settlement contained therein, nor any act performed or document executed pursuant to or in furtherance of the Stipulation or the

Settlement: (a) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claim, or of any wrongdoing or liability of Released Parties, or (b) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of Released Defendant Parties in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal. Released Defendant Parties may file the Stipulation and/or this Judgment from this action in any other action that may be brought against them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any theory of claim preclusion or issue preclusion or similar defense or counterclaim.

14. Without affecting the finality of this Judgment in any way, this Court hereby retains continuing jurisdiction over: (a) implementation of this Settlement and any award or distribution of the Settlement Fund, including interest earned thereon; (b) disposition of the Settlement Fund; (c) hearing and determining applications for attorneys' fees, charges, and expenses, and interest in the Litigation, as well as any award to Plaintiffs pursuant to 15 U.S.C. §77z-1(a)(4); (d) all parties herein for the purpose of construing, enforcing, and administering the Stipulation; (e) the Settlement Class Members for all matters relating to the Litigation; and (f) other matters related or ancillary to the foregoing. The administration of the Settlement, and the decision of all disputed questions of law and fact with respect to the validity of any claim or right of any Person to participate in the distribution of the Net Settlement Fund, shall remain under the authority of this Court.

15. The Court finds that during the course of the Litigation, the Settling Parties and their respective counsel at all times complied with the requirements of strictures of the PSLRA Section 26-1(c) and Tennessee Rule of Civil Procedure 11.02.

16. In the event that the Settlement does not become effective in accordance with the terms of the Stipulation, or the Effective Date does not occur, then this Judgment shall be rendered null and void to the extent provided by and in accordance with the Stipulation and shall be vacated and, in such event, all orders entered and releases delivered in connection herewith shall be null and void to the extent provided by and in accordance with the Stipulation and the Settlement Fund shall be returned in accordance with the Stipulation.

17. Without further order of the Court, the Settling Parties may agree to reasonable extensions of time to carry out any of the provisions of the Stipulation.

18. The Court directs immediate entry of this Judgment by the Clerk of the Court.

**IT IS SO ORDERED.**

DATED: \_\_\_\_\_

\_\_\_\_\_  
THE HONORABLE MICHAEL S. PEMBERTON  
CIRCUIT COURT JUDGE