

Original

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,)	
) Judge Pemberton
Plaintiff,)	
vs.)	
DELOY MILLER, et al,)	
)
Defendants.)	
_____)	

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

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

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 MORGAN CO. CIRCUIT CLERK

BY: *H Shadden*
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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:

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 June 12, 2023, at ^{01:00 noon} ~~10:00~~ 1.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,

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

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 March 21, 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 March 21, 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.

12. Not later than March 28, 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 May 23, 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 May 30, 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 May 23, 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 May 23, 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 May 9, 2023 [a date 35 calendar days before the Settlement Hearing], and any reply papers shall be filed and served no later than June 5, 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: March 7, 2023



THE HONORABLE MICHAEL S. PEMBERTON
CIRCUIT COURT JUDGE

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MORGAN CO. CIRCUIT CLERK

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.


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