

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. )  
 )  
\_\_\_\_\_ )

**DECLARATION OF KENNETH GAYNOR IN SUPPORT OF PLAINTIFFS' MOTION  
FOR FINAL APPROVAL OF SETTLEMENT AND APPROVAL OF THE PLAN OF  
ALLOCATION AND FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES AND  
AN AWARD TO PLAINTIFFS PURSUANT TO 15 U.S.C. §77Z-1(A)(4)**

I, KENNETH A. GAYNOR, declare as follows:

1. I am a plaintiff in the above referenced litigation. I was also the Court-appointed Lead Plaintiff in the federal action where this litigation was litigated for five years prior to remand. I respectfully submit this Declaration in support of the motion for final approval of settlement, approval for an award of attorneys' fees, and litigation expenses and charges, and my request for

an award in connection with my involvement as a plaintiff in the prosecution and resolution of this litigation. I have personal knowledge of the facts as set forth herein and, if called as a witness, I could and would competently testify thereto.

1. I authorized the law firm of Robbins Geller Rudman & Dowd LLP (“Robbins Geller”) as lead counsel and Barrett Johnston Martin & Garrison, LLC (“Barrett Johnston”) as local counsel, to file a complaint in the Circuit Court for Morgan County, 9th Judicial District, in the State of Tennessee, alleging violations of the federal securities laws. On December 9, 2015, Defendants filed a notice of removal seeking to remove the case to the United States District Court for the Eastern District of Tennessee, Knoxville Division (“Federal Court”) in accordance with the Securities Act of 1933, as amended by the Securities Litigation Uniform Standard Act of 1998. 15 U.S.C. §§77v(a), 77(p), which I opposed.

2. On November 8, 2016, I requested that the Federal Court appoint me as Lead Plaintiff based on my purchases and sales of Miller Energy Resources, Inc. (“Miller Energy”) 10.5% Series D Fixed Rate/Floating Rate Cumulative Redeemable Preferred Stock. On December 27, 2016, the Federal Court appointed me as a Lead Plaintiff (along with other Miller Energy investors Marcia Goldberg, Gabriel R. Hull, and Christopher R. Vorrath) and approved our selection of Robbins Geller as Lead Counsel and Barrett Johnston as Local Counsel under the Private Securities Litigation Reform Act of 1995 (“PSLRA”), 15 U.S.C. §78u-4.

3. From the filing of my initial complaint onward, I received regular updates from Robbins Geller and was involved in making key decisions relating to litigating and resolving this litigation for the benefit of the Class. As part of this process, I kept abreast of significant factual developments involving Miller Energy and remained informed of Robbins Geller’s investigative efforts. I received detailed updates on case strategy and read the draft and final versions of the

amended complaint filed on January 5, 2017, which supplemented the theory of this litigation from that alleged in my initial complaint. I provided responsive documents to requests for production, sat for deposition in New York, New York, attended the class certification hearing in Knoxville, Tennessee, discussed with Robbins Geller the range of potentially recoverable damages, and reviewed the mediation statement. Additionally, I remained available for consultation during the mediation, reviewed updates on the progress of negotiations, and stayed informed on the status of all settlement documentation. In short, I devoted a substantial amount of time to monitoring this litigation and Robbins Geller's efforts on behalf of the Class.

4. Through my involvement as a plaintiff, as well as my continuous discussions with Robbins Geller, I developed an understanding of the strengths and weaknesses of the claims alleged in this litigation and am aware of the obstacles to class certification, summary judgment, and establishing and recovering damages. Based on this understanding, I strongly support presentation of the settlement to this Court for approval.

5. I have also discussed with Robbins Geller and support its request to this Court for a fee award of thirty-three percent (33%), plus an award of litigation expenses and charges. I believe the settlement represents a favorable result for the Class and understand that Robbins Geller has not yet received any compensation for its work as Lead Counsel.

6. Lastly, under 15 U.S.C. §77z-1(a)(4) of the PSLRA, I respectfully request an award in the amount of \$10,000 for the efforts I expended in serving as a plaintiff. As set forth above, I worked closely with Robbins Geller over the past seven years in achieving a favorable outcome for all Class members and believe that I faithfully discharged my obligations as a plaintiff by acting as a steward for the Class. In that capacity, I frequently dedicated time to this litigation.

7. From the start of my involvement in November 2015 through the date of this submission (over seven years later), I reasonably estimate that I spent well over 200 hours in representing and advancing the Class' interests. This estimate is based on my records, as well as Robbins Geller's records of communicating with me. As explained above, this time involved interfacing with Robbins Geller on the lead plaintiff process, the factual investigation, preparation of the amended complaint, motion to dismiss briefing, class certification, remand to this Court, and litigation strategy, including sitting for deposition, assessing damages, choosing a mediator and conducting mediation, negotiating settlement terms and settlement documentation, and monitoring factual developments after mediation.

8. Accordingly, I respectfully seek an award in the amount of \$10,000 in connection with the efforts I dedicated to this litigation, as outlined in more detail above.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on April \_\_, 2023, at Greenvale, New York.

  
KENNETH A. GAYNOR

**CERTIFICATE OF SERVICE**

I hereby certify that on May 9, 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

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