UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

IN RE FRONTIER COMMUNICATIONS CORPORATION STOCKHOLDERS LITIGATION	No. 3:17-cv-01617-VAB

LEAD PLAINTIFFS' MEMORANDUM OF LAW IN OPPOSITION TO OBJECTOR CATHERINE L. SCOTT'S MOTION TO LIFT DISCOVERY STAY

Lead Plaintiffs respectfully submit this memorandum of law in opposition to the motion by Objector Catherine L. Scott (the "Objector") to lift the discovery stay (ECF No. 202) (the "Motion").[1]

INTRODUCTION

On January 18, 2022, the Court granted preliminary approval of the Settlement—a meaningful $15.5 million cash recovery achieved by Lead Plaintiffs after years of extremely hard-fought litigation and unforeseeable events, including the bankruptcy of Defendant Frontier—ordered the distribution of hundreds of thousands of Notices informing members of the Settlement Class of the Settlement and their right to object, and scheduled the final approval hearing for the Settlement for May 10, 2022. *See* ECF No. 193. Following this extensive notice process, there was only ***one*** objection (the "Scott Objection"). *See* ECF No. 200. For the reasons described in the

[1] Unless otherwise defined, all capitalized terms herein have the same meanings as set forth in the Stipulation and Agreement of Settlement dated December 23, 2021 (ECF No. 192-2) or in the Declaration of Katherine M. Sinderson in Support of: (A) Lead Plaintiffs' Motion for Final Approval of Settlement and Plan of Allocation; and (B) Lead Counsel's Motion for Attorneys' Fees and Litigation Expenses (ECF No. 198).

reply briefs in support of the Settlement Motion and Fee Motion timely filed by Lead Plaintiffs and Lead Counsel, the Scott Objection should be overruled. *See* ECF Nos. 203, 204.

Subsequent to filing the Scott Objection, on May 2, 2022—10 days before the Final Approval hearing—the Objector filed the Motion, asking the Court for the first time to permit the Objector to conduct discovery into Defendants' insurance coverage, on the purported basis that such discovery is necessary to "ascertain the reasonableness" of the Settlement. Motion at 1.

Lead Plaintiffs respectfully oppose the Motion. Even if permitted, the discovery sought by the Motion would have no impact on the reasonableness of the Settlement. As described extensively elsewhere, the $15.5 million Settlement represents an excellent recovery for the Settlement Class considering both the significant risks faced from continued litigation and the overall estimated damages reasonably estimated to be suffered by Class Members. *See, e.g.*, ECF No. 195 at 10-18; ECF No. 198, ¶¶70-86. The discovery sought by the Objector for her review would disclose, at most, the extent of Defendants' applicable insurance coverage—but the mere existence of available insurance by no means indicates that such insurance ***would*** have been available to fund a greater settlement, nor would such information in any way undermine the substantial risks faced from continued litigation. Notably, while the Motion is correct that Defendants were never required to provide the insurance policies to Plaintiffs' Counsel (Motion at 5), the Objector is incorrect that Lead Plaintiffs did not receive relevant information about Defendants' insurance coverage. Lead Plaintiffs were provided relevant information about potentially available insurance coverage under the confidentiality protections of settlement negotiations (*see* Federal Rule of Evidence 408), and this information—along with many other considerations—was taken into account in connection with the extensive, arms-length negotiations undertaken by experienced negotiators in connection with the Settlement.

Finally, not only would the discovery sought by the Motion ultimately fail to benefit the Settlement Class, it would actually ***harm*** those injured investors. Permitting the discovery sought by the Objector will necessarily require the Court to delay approval of the Settlement, and the Objector is noncommittal about the length of time she believes would be necessary for her to conduct the discovery requested. Thus, granting the Motion would delay even longer any recovery for injured investors, who have already been waiting since 2017 (when this case was first filed)—all without ultimately resulting in any increase to the Settlement Amount.

In sum, the Motion should be denied.

ARGUMENT

"Objectors to a proposed settlement agreement do not have an 'automatic right to discovery or an evidentiary hearing in order to substantiate their objections.'" *Casey v. Citibank, N.A.*, 2014 WL 4120599, at *1 (N.D.N.Y. 2014) (quoting *Charron v. Wiener*, 731 F.3d 241, 248 (2d Cir. 2013). *See also, e.g.*, *In re Gen. Tire & Rubber Co. Sec. Litig*., 726 F.2d 1075, 1084 n.6 (6th Cir. 1984) ("While objectors are entitled to meaningful participation in the settlement proceedings, and leave to be heard, they are not automatically entitled to discovery or to question and debate every provision of the proposed compromise") (citations and quotation marks omitted). Here, there are at least two explicit discovery stays in this case: (1) the mandatory discovery stay imposed by the PSLRA; and (2) the stay ordered by this Court's Preliminary Approval Order (ECF No. 193, ¶21). The Motion does not identify any particularized facts sufficient to lift either of these stays.

I. THE MOTION DOES NOT ESTABLISH THE NEED FOR DISCOVERY

It is exceptionally rare for a court to grant an objector's request for discovery, particularly at this late hour. The general rule is that discovery by objectors must be "***conditioned on a showing of need***, because it will delay settlement, introduce uncertainty, and might be undertaken primarily to justify an award of attorney fees to the objector's counsel." *In re Lupron Mktg. & Sales Practices*

Litig., 2005 WL 613492, at *2 (D. Mass. Mar. 16, 2005) (quoting MANUAL FOR COMPLEX LITIGATION, FOURTH §21.643 (2004) (emphasis added)). *See also, e.g.*, *Wal-Mart Stores, Inc. v. Visa, USA, Inc.*, 396 F.3d 96, 120 (2d Cir. 2005) ("Generally, such a discovery request depends on 'whether or not the District Court had before it sufficient facts intelligently to approve the settlement offer. If it did, then there is no reason to hold an additional hearing on the settlement or to give appellants authority to renew discovery.'" (quoting *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 462-63 (2d Cir.1974))); *Jaffee v. Morgan Stanley & Co., Inc.*, 2008 WL 346417, at *2 (N.D. Cal. Feb. 7, 2008) (denying objector's request for discovery because "the Court has sufficient facts before it to intelligently evaluate the settlement, and discovery would cause unnecessary delay"); *Epstein v. Wittig*, 2005 WL 3276390, at *7 (D. Kan. Dec. 2, 2005) (same). Thus, the "fundamental question is whether the district judge has sufficient facts before him [or her] to intelligently approve or disapprove the settlement." *Lupron*, 2005 WL 613492, at *2.

The Court already readily has sufficient facts to evaluate the Settlement here. Lead Plaintiffs' submissions extensively describe that the Settlement was the product of extensive, arms-length settlement negotiations, in which Defendants' ability to pay was just one of many factors already taken into consideration, including the strength and merits of the claims, the damages suffered by investors, and the risks of continued litigation. Even if permitted, the discovery sought by the Objector about Defendants' insurance policies would not itself indicate that any additional recovery actually ***could*** have been achieved—much less undermine the fairness, reasonableness, and adequacy of the Settlement in light of the risks, damages suffered, and other factors in entirety.

There is likewise no merit to the passing suggestion in the Motion that the requested discovery "may inform the reasonableness of attorney's fees." Motion at 8. At the outset, discovery

that—in the Objector's own words—simply "***may*** inform" facially suffices to demonstrate any "need" sufficient to warrant discovery. In any event, the only explanation offered is a baseless implication in a footnote that insurance—not the merits—should have dictated what claims were appealed to the Second Circuit. Motion at 8, n.3 ("Counsel for Lead Plaintiffs . . . abandon[ed] the class claims against 24 of the original defendants . . . with full knowledge of the existence of 78 D&O insurance policies the Debtor maintained."). Lead Plaintiffs and Lead Counsel made the determination to appeal only against Frontier and Defendant McCarthy because, in their judgment, that was the most likely to succeed given the Court's ruling that falsity and scienter had been sufficiently pled for only those two Defendants; accordingly, the appeal would optimize shareholders' chances at successfully moving the case towards ***any*** recovery at all. Second-guessing this well-reasoned litigation strategy on the basis of the Objector's opinion that Lead Plaintiffs should have instead been guided instead by the mere possibility of insurance does not demonstrate the need required to permit discovery and delay settlement approval. Indeed, a court is entitled to give substantial weight to the opinions of the parties and experienced counsel, who are most familiar with the facts of the case. *See In re EVCI Career Colls. Holding Corp. Sec. Litig.*, 2007 WL 2230177, at *4 (S.D.N.Y. July 27, 2007) ("[A] court neither substitutes its judgment for that of the parties who negotiated the settlement nor conducts a mini-trial of the merits of the action[.]"); *see also, e.g.*, *In re Bank of Am. Corp. Sec. Derivative & ERISA Litig.*, 2010 WL 1438980, at *1-2 (S.D.N.Y. Apr. 9, 2010) ("[I]n a securities class action, a lead plaintiff is empowered to control the management of the litigation as a whole, and it is within the lead plaintiff's authority to decide what claims to assert on behalf of the class.").

Finally, the fact that the Objector raised the ***only*** objection to the Settlement—even after an exhaustive notice program sent over 750,000 notices to potential Settlement Class Members—

further weighs against the Motion. Courts routinely deny objectors' requests for discovery when there are few objectors. *See, e.g.*, *Siemer v. Quizno's Franchise Co. LLC*, 2010 WL 3238840, at *3 (N.D. Ill. Aug. 13, 2010) (courts are disinclined to permit discovery where "objectors represent only a small percentage of the class"); *Lupron*, 2005 WL 613492, at *2 ("The criteria relevant to the court's decision of whether or not to permit discovery [include] . . . [the] number and interests of objectors") (citation omitted)).

In sum, the Motion should further be denied because it fails to demonstrate a compelling need sufficient to permit discovery by an objector.[2]

II. GRANTING THE MOTION WOULD HURT THE INTERESTS OF THE SETTLEMENT CLASS

Finally, Lead Plaintiffs respectfully submit that granting the Motion and permitting the discovery requested would actually harm the Settlement Class. This Action has been pending since 2017. After years of hard-fought litigation and unpredictable events—including Frontier's bankruptcy and a global pandemic—Lead Plaintiffs and Lead Counsel were able to secure an excellent recovery for the Settlement Class considering the risks faced from continued litigation and the damages suffered by investors. The discovery sought by the Motion would delay even longer any recovery by injured investors—without any reasonable likelihood of increasing the settlement amount.

CONCLUSION

For the foregoing reasons, the Motion should be denied in its entirety.

[2] Moreover, the Objector further fails to establish the "undue prejudice" necessary to overcome the discovery stay imposed by the Private Securities Litigation Reform Act of 1995. 15 U.S.C. § 78u-4(b)(3)(B). *See also, e.g.*, *In re Vivendi Universal, S.A. Sec. Litig.*, 381 F. Supp. 2d 129, 130 (S.D.N.Y. 2003) (lifting the PSLRA discovery stay requires "exceptional circumstances"). The requested discovery into the "existence and availability" of Defendants' insurance policies (Motion at 2) cannot establish that any greater recovery could have been achieved, and thus there is no prejudice, much less undue prejudice. The Motion cites no cases otherwise.

Dated: May 5, 2022

Respectfully submitted,

/s/ Katherine M. Sinderson

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CERTIFICATE OF SERVICE

I certify that on May 5, 2022 a copy of the foregoing Lead Plaintiffs' Memorandum of Law in Opposition to Objector Catherine L. Scott's Motion to Lift Discovery Stay was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by email to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System. I further certify that a copy of the foregoing will be sent by email and mail to:

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/s/ Katherine M. Sinderson
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