

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA**

DASA INVESTMENTS, INC.,)
)
Plaintiff,)
)
v.)
)
ENERVEST OPERATING, L.L.C.;)
ENERVEST ENERGY INSTITUTIONAL)
FUND XIII-A, L.P.; ENERVEST)
ENERGY INSTITUTIONAL FUND)
XIII-WIB, L.P.; ENERVEST ENERGY)
INSTITUTIONAL FUND XIII-WIC, L.P.;)
ENERVEST, LTD.; AND SM ENERGY)
COMPANY)
)
Defendants.)

Case No. 6:18-CIV-083-SPS

DECLARATION OF MEDIATOR STEVEN L. BARGHOLS

I, STEVEN L. BARGHOLS, upon personal knowledge and pursuant to 28 U.S.C. § 1746, declare as follows:

1. I was selected by the parties to mediate the above-entitled action and did so as an independent mediator. Although the parties did not reach a settlement on the day of the mediation, the parties continued discussions after the mediation which resulted in a settlement.

2. While the mediation process is confidential, the parties have authorized me to inform the Court of the matters set forth below, to be used in support of Plaintiff's Motion for Final Approval of Class Settlement.

3. My statements and those of the parties during the mediation are subject to confidentiality by operation of law, and I do not intend to compromise the confidentiality of the mediation process. I make this Declaration based on personal knowledge and I am competent to so testify.

QUALIFICATIONS

4. I am a founding shareholder of Hampton Barghols Pierce, PLLC. I have practiced law for more than 40 years and I have mediated more than 3,500 matters across and outside Oklahoma. I am a Band 1 mediator listed by *Chambers and Partners U.S.A.* and I serve regularly as a mediator and as an arbitrator in cases involving energy law, contract law, insurance law, and property issues.

5. A true and correct copy of my curriculum vitae is attached hereto as Exhibit A.

THE SETTLEMENT PROCESS WAS THOROUGH, FAIR, AND ARM'S-LENGTH

6. Before the mediation, the parties provided to me and exchanged with each other extensive, confidential legal briefing regarding class certification, merits, and damages issues supported by evidence and expert opinions. Based on these submissions and discussions during the mediation, I concluded that Class Counsel had performed a thorough examination of the factual discovery and payment data and, with the aid of experts, analyzed it to determine appropriate case valuations. Class Counsel was current and well informed on the law and provided legal research and analysis of Oklahoma law, federal law, and the law of other states. Also, Defendants were cooperative in producing massive amounts of confidential information to enable Class Counsel to assess the case. It was apparent that counsel for Defendants had performed considerable work in preparation for the mediation.

7. The mediation occurred at the offices of Hampton Barghols Pierce, PLLC in Oklahoma City, Oklahoma, on May 14, 2019. Plaintiff and Class Representative, Gene Hacker, attended in-person, along with his counsel, Michael Burrage, Pat Ryan, Jason Ryan, and Paula Jantzen. The EnerVest Defendants attended through their outside counsel, Guy Lipe and Jay Walters; Erika Anderson, their inside counsel with responsibility for this litigation, and David

Abell. SM Energy attended through its outside counsel, J. Kevin Hayes, and David W. Copeland, Executive Vice-President and General Counsel for SM Energy.

8. During the mediation session, I asked detailed questions of both sides to expose their strengths and weaknesses, as well as to clarify where substantial disputes on class certification, liability, damages, and certain defenses still existed. The parties were cooperative and professional throughout this process.

9. Although the parties were unable to reach an agreement at the mediation, they continued discussions and memorialized their negotiated settlement on September 9, 2019.

THE PARTIES' NEGOTIATED SETTLEMENT IS THE PRODUCT OF A VIGOROUS, FAIR, REASONABLE, AND HONEST MEDIATION PROCESS

10. After presiding over the mediation process in this case, I am entirely convinced that the parties' settlement is the product of vigorous and independent advocacy and arm's-length negotiations conducted diligently, honestly, and in good faith.

11. The parties exchanged massive amounts of data for experts to analyze. However, considerable differences continued to exist between the parties before and during the course of the mediation session on liability, damages, statute of limitations, and other issues.

12. For example, the parties presented opposing, good faith arguments as to Defendants' duty, under Oklahoma oil and gas law, to pay statutory interest on certain types of payments. The parties also disagreed about whether and to what extent Defendants were responsible for certain late payments that occurred during the relevant time period. An adverse ruling on these issues would be devastating to Plaintiff's case.

13. The dispute settled prior to class certification, which can often be a substantial hurdle for plaintiffs. Further, following certification, Class Representative and Class Counsel would still have been required to file, respond to, and win motions for summary judgment and

ultimately succeed at trial—all for an unknowable amount of money, if any, to be awarded by an unknown jury.

14. Throughout the mediation process, I developed an understanding of the dispute, the respective liability and damages positions of the parties, and the relative strengths and weaknesses of those positions, as well as the risks, rewards, and costs of continued litigation and inevitable appeal, and the understanding and appreciation of these various matters by all counsel and representatives participating in the mediation.

15. It is apparent from the submissions and presentations made by Class Counsel before and during the mediation session, as well as from my extensive discussions with them, that Class Counsel performed a thorough examination of the documents and data produced in this litigation.

16. It is also my opinion that Class Counsel performed substantial work and effort in preparing their case for mediation and in presenting their claims in such a way to produce a valuable settlement for the Class.

I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct.

FURTHER AFFIANT SAYETH NOT.

Dated this 15th day of February, 2020.



Steven L. Barghols, Mediator