

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

CHRISTOPHER SNIDER, on behalf of the)
Seventy Seven Energy Inc. Retirement &)
Savings Plan and a class of similarly)
situated participants of the Plan,)

Plaintiff,)

v.)

Case No. CIV-20-977-D

ADMINISTRATIVE COMMITTEE,)
SEVENTY SEVEN ENERGY INC.)
RETIREMENT & SAVINGS PLAN; et al.)

Defendants.)

**NOTICE OF FILING OF REPORT
OF THE INDEPENDENT FIDUCIARY**

On May 19, 2022, this Court granted preliminary approval of the proposed class settlement. Dkt. 41. Pursuant to that Order, the Court approved the selection of Fiduciary Counselors as the Independent Fiduciary and ordered that a copy of the report of the Independent Fiduciary be filed. *Id.* at 10. Attached hereto as Exhibit 1 is the Report of the Independent Fiduciary, dated July 19, 2022.

Dated: July 19, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 19, 2022, I electronically transmitted the foregoing document to the Clerk of Court using ECF System for filing and transmittal of a Notice of Electronic Filing to the counsel of record for the Defendants.

/s/ Mark G. Boyko _____
Mark G. Boyko

EXHIBIT 1



Report of the Independent Fiduciary
for the Settlement in
*Snider v. Administrative Committee, Seventy Seven
Energy Inc. Retirement & Savings Plan*

July 19, 2022

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I. Introduction

Fiduciary Counselors has been appointed as an independent fiduciary for the Seventy Seven Energy Inc. Retirement & Savings Plan, which became the Seventy Seven Energy LLC Retirement & Savings Plan and was merged into the Patterson-UTI Energy, Inc. 401(k) Profit Sharing Plan (collectively, the “Plan”), in connection with the settlement (the “Settlement”) reached in *Snider v. Administrative Committee, Seventy Seven Energy Inc. Retirement & Savings Plan*, Case No. CIV-20-977-D, (the “Litigation” or “Action”), which was brought in the United States District Court for the Western District of Oklahoma (the “Court”). Fiduciary Counselors has reviewed over 100 previous settlements involving ERISA plans.

II. Executive Summary of Conclusions

After a review of key pleadings, decisions and orders, selected other materials and interviews with counsel for the parties, Fiduciary Counselors has determined that:

- The Court has preliminarily certified the Litigation as a class action for settlement purposes, and in any event, there is a genuine controversy involving the Plan.
- The Settlement terms, including the scope of the release of claims, the amount of cash received by the Plan and the amount of any attorneys’ fee award or any other sums to be paid from the recovery, are reasonable in light of the Plan’s likelihood of full recovery, the risks and costs of litigation, and the value of claims forgone.
- The terms and conditions of the transaction are no less favorable to the Plan than comparable arm’s-length terms and conditions that would have been agreed to by unrelated parties under similar circumstances.
- The transaction is not part of an agreement, arrangement or understanding designed to benefit a party in interest.
- The transaction is not described in Prohibited Transaction Exemption (“PTE”) 76-1.
- All terms of the Settlement are specifically described in the written settlement agreement and the plan of allocation.
- The Plan is receiving no assets other than cash in the Settlement.

Based on these determinations about the Settlement, Fiduciary Counselors hereby approves and authorizes the Settlement on behalf of the Plan in accordance with PTE 2003-39.

III. Procedure

Fiduciary Counselors reviewed key documents, including the Complaint, the Motion to Dismiss, the Court’s Order Granting in Part and Denying in Part Defendants’ Motion to Dismiss, the Settlement Agreement, the parties’ Mediation Statements, the Motion for Preliminary Approval

and related papers, the Court's Order Preliminarily Approving Settlement, the Notice, the Plan of Allocation, the Motion for Attorneys' Fees, Costs and Service Awards and related papers and the Motion for Final Approval of Class Settlement and related papers. We also reviewed key documents from *Myers v. Administrative Committee, Seventy Seven Energy Inc. Retirement & Savings Plan*, Case No. CIV-17-200-D, a related but not consolidated case in the same Court. In order to help assess the strengths and weaknesses of the claims and defenses in the Litigation, as well as the process leading to the Settlement, the members of the Fiduciary Counselors Litigation Committee conducted separate telephone interviews with counsel for both Defendants and the Plaintiff and followed up with additional questions.

IV. Background

A. Procedural History of Case

Factual Background.

On June 30, 2014, Chesapeake Energy Corporation ("Chesapeake") spun off Seventy Seven Energy, Inc. ("SSE"), and the Plan was established the following day. SSE was the Plan administrator and named fiduciary and Delaware Charter Guarantee & Trust Company, d/b/a Principal Trust Company ("Principal Trust") was the Plan's directed trustee. On July 1, 2014, Chesapeake's 401(k) plan transferred \$196,210,229 in assets to the plan corresponding to the 401(k) accounts of the employees who had been transferred to SSE in the spin-off. Over 44% of the transferred assets, worth \$87,038,874, consisted of Chesapeake common stock ("CHK"). The Plan allowed participants to maintain their accounts in CHK stock or to sell part or all of their interests in CHK stock, but did not allow participants to allocate new investments in CHK stock.

Litigation.

Plaintiff Christopher Snider filed this class action lawsuit on September 28, 2020, on behalf of participants in the Plan whose retirement assets were invested in Chesapeake. Plaintiff alleged that Defendants breached their duty of prudence when they failed to remove Chesapeake stock as a Plan investment option on the day after the spin-off when it should have been clear that it was not a prudent investment option, and instead caused the Plan to purchase additional Chesapeake shares. Second, Plaintiff alleged Defendants breached their fiduciary duty when they failed to monitor the prudence of investment in Chesapeake stock during the Class Period and remove it as an investment option for the Plan. Finally, Plaintiff alleged that Defendants violated their duty under ERISA to diversify the Plan's investments. Plaintiff further alleged that due to Defendants' fiduciary breaches, the Plan's participants lost tens of millions of dollars in retirement savings when the share price of CHK stock declined. On December 18, 2020, Defendants moved to dismiss, which the Court granted in part and denied in part on October 8, 2021. The Court held that Plaintiff's Complaint adequately stated "claims against Defendants for breaching fiduciary duties under 29 U.S.C. § 1104(a)(1)(B) and (C) to act with prudence and to diversify the Plan's investments but that the Complaint fails to state a separate claim that they breached a duty to monitor the Plan's investments." The Court

entered a scheduling order (the “Scheduling Order”) on January 25, 2022. Based on the Scheduling Order, the parties conducted class certification discovery.¹

Settlement and Preliminary Approval.

The parties participated in a mediation on February 15, 2022, and Defendants produced documents to Plaintiff ahead of mediation to facilitate a productive settlement process. The parties retained Robert Meyer, a recognized and respected mediator with national experience in ERISA cases generally and cases concerning the selection of 401(k) investment options in particular. During the mediation, the parties moved toward an agreement in principle. Over the weeks that followed, the parties negotiated the details of the Settlement and finalized the Settlement on April 18, 2022.

Plaintiff filed a motion seeking preliminary approval of the Settlement on April 21, 2022. The Court granted Plaintiff’s motion on May 19, 2022. The Court’s Order: (1) preliminarily certified the class for settlement purposes; (2) approved the form and method of class notice; (3) set August 18, 2022 as the date for a Fairness Hearing; (4) set July 28, 2022 as the deadline for objections; and (5) approved Kurtzman Carson Consultants LLC as the Settlement Administrator.

Objections.

July 28, 2022 is the deadline for Class Members to file objections to the Settlement. No Class Members have filed any objections as of the submission of this report.

V. Settlement

A. Settlement Consideration

The Settlement provides for a Settlement Amount of \$15,000,000. After deducting the (1) costs of Class Notice and Settlement Administration Expenses; (2) a Case Contribution Award in the amount of \$20,000 to the Named Plaintiff, subject to Court approval; and (3) Plaintiff’s Counsel’s Attorneys’ Fees in an amount not to exceed 33 1/3% of the Settlement Amount and costs and expenses, subject to Court approval, the remainder (known as the “Net Settlement Fund”) will be distributed to the Class Members in accordance with the Plan of Allocation.

¹*Myers v. Administrative Committee, Seventy Seven Energy Inc. Retirement & Savings Plan* had been filed in 2017 and litigated extensively. The Court had entered orders granting in part and denying in part a motion to dismiss, denying a motion to add Snider as a plaintiff, denying a motion to consolidate the *Myers* and *Snider* cases, and denying certification of a class on the ground that Myers was not an adequate class representative because she had signed a release as part of a severance agreement. There also was extensive discovery in the *Myers* case, as well as the preparation and exchange of expert reports. This information significantly informed the negotiations that resulted in the Settlement.

Class and Class Period

The Settlement defines the Settlement Class as follows:

all persons, except Defendants and their Immediate Family Members, who were participants in or beneficiaries of the Seventy Seven Energy Inc. Retirement & Savings Plan, Seventy Seven Energy LLC Retirement & Savings Plan, Patterson-UTI Energy, Inc. 401(k) Profit Sharing Plan, and their Successors-in-Interest (collectively, the “Plan”) at any time from July 1, 2014 to February 28, 2021, inclusive (the “Class Period”), and whose Plan accounts included any investment in Chesapeake Energy Corporation at any time during such period.

The Settlement defines the Class Period as the period from July 1, 2014 to February 28, 2021.

The Court has preliminarily certified the Settlement Class, for settlement purposes only.

B. The Release

The Settlement defines Released Claims as follows:

any and all past, present, and future claims, demands, rights, liabilities, causes of action, damages, costs, expenses, and compensation of every nature or description whatsoever, fixed or contingent, known or unknown, accrued or unaccrued, liquidated or unliquidated, now existing or that might arise hereafter, at law or in equity, matured or unmatured, whether class or individual in nature, asserted or that might or could have been asserted in any forum by Releasing Parties against any or all of the Released Parties that: (a) were brought or could have been brought in the Action and arise out of the same or substantially similar facts, circumstances, situations, transactions, or occurrences as those alleged in the Action; or (b) were brought or could have been brought under ERISA with respect to Chesapeake Stock in the Plan (including the Patterson Plan).

The parties intend this Release to be as broad and comprehensive as possible so as to give the Released Parties the broadest possible protection, but it does not purport to cover potential claims not covered by (a) or (b) in the definition of Released Claims.

The terms of the release, including the provision for the Independent Fiduciary to provide a release of claims by the Plan, are reasonable.

C. The Plan of Allocation

Net Proportion. The Settlement Administrator shall determine each Class Member’s Net Proportion in accordance with the following formula:

“Net Proportion” =
 (Class Member’s proportion of Plan’s CHK investment on 7/1/2014) * 0.3 +
 (Class Member’s proportion of Plan’s CHK investment on 12/31/2014) * 0.4 +
 (Class Member’s proportion of the Plan’s CHK investment on 12/31/2015) * 0.1 +
 (Class Member’s proportion of the Plan’s CHK investment on 12/28/2017) * 0.2.

Thus, a Settlement Class member’s allocation will depend on the amount he or she had invested in CHK stock at the beginning of the Class Period and whether and when the Settlement Class member divested their account of CHK stock before it was removed from the Plan. The formula is intended to be a reasonable reflection of the harm each Settlement Class member allegedly suffered and the strength of the claims during the time each Settlement Class member continued to be invested in CHK stock.

First Distribution. The Settlement Administrator shall calculate the First Distribution to Class Members as follows:

- i. Calculate each Class Member’s share of the Distributable Amount by multiplying (1) the Class Member’s Net Proportion and (2) the Distributable Amount.
- ii. Increase any Class Member’s share of the Distributable Amount to \$10.00, so that each Class Member will receive at least \$10.00 for the First Distribution. The Distributable Amount will be re-allocated until all Class Member’s awards are \$10.00 or more. This modified award shall be known as the Class Member’s Entitlement Amount.
- iii. For Class Members with multiple account names, each account will be calculated separately, and each entitled to an increase to \$10.00 if appropriate.

The Settlement Administrator will make diligent effort to mail the First Distribution within sixty (60) calendar days of the Effective Date. It is contemplated that distributions may be made in waves, where using that approach is more efficient for the Settlement Administrator, so that payments are not unduly delayed. Class Members will be paid by check but will have the option to elect via the Settlement Website for the check to be payable into a qualified retirement account, which shall be handled by the Settlement Administrator. Checks will expire one-hundred twenty (120) calendar days after issuance, after which the checks shall be void and the Settlement Administrator shall be instructed to return any such funds to the Settlement Fund.

Second Distribution, If Applicable.

- a. Within ten (10) calendar days of the voidance of all checks mailed in the First Distribution (not the voidance of all Reissued Checks), the Settlement Administrator will calculate a Second Distributable Amount using (1) the balance of the Settlement Fund minus (2) deductions for (i) anticipated future Settlement Expenses and (ii) the sum of all non-voided Reissued Checks (“Second Distributable Amount”). The Settlement Administrator shall obtain, in writing, an

agreement with Class Counsel and the Settlement Administrator on the Second Distributable Amount.

- b. If and only if the Second Distributable Amount exceeds \$75,000, the Settlement Administrator shall calculate a Second Distribution to Class Members as follows:
 - i. Calculate each Class Member's share of the Second Distributable Amount by multiplying (1) the Class Member's Net Proportion and (2) the Second Distributable Amount.
 - ii. Increase any Class Member's share of the Second Distributable Amount to \$10.00, so that each Class Member will receive at least \$10.00 for the Second Distribution. The Second Distributable Amount will be re-allocated until all Class Member's awards are \$10.00 or more. This modified award shall be known as the Class Member's Entitlement Amount and used for purposes of the Second Distribution.
 - iii. For Class Members with multiple account names, each account will be calculated separately, and each entitled to an increase to \$10.00 if appropriate.

Where a Class Member elected for their First Distribution to be paid into a qualified retirement account, that Class Member's distribution under this Section will also be made into the same account, unless not administratively practicable. Checks shall be void after ninety calendar (90) days. Within thirty (30) calendar days following the voidance of all outstanding checks from the First Distribution and any Second Distribution, the Settlement Fund, following the payment of all outstanding Settlement Expenses, shall be distributed to the Pension Rights Center, as a *cy pres* payment, or, with consent of the Parties at the time of the Final Distribution, one or more alternative entities supporting and/or educating 401(k) savers ("Final Payment"). In no case shall such funds be paid to or for the benefit of the Company or any Defendant.

We find the Plan of Allocation to be reasonable, including:

- (1) the distribution of funds based on based on a formula which considers how much CHK stock the Class Member owned at the start of the Class Period and when, if ever, the Class Member removed some or all of their CHK stock investment from the Plan;
- (2) the provisions for payments by check and allowing Class Members to direct that the distribution be made into another qualified retirement account;
- (3) the \$10 minimum amount;
- (4) the provision for a second distribution if \$75,000 remains available for distribution; and
- (5) the provision for a *cy pres* payment of residual amounts.

The provisions are cost-effective and fair to Class Members in terms of both calculation and distribution.

D. Attorneys' Fees, Litigation Expenses and Service Awards

Class Counsel seek an award of attorneys' fees in the amount of \$5,000,000, which represents one-third of the Settlement Amount of \$15,000,000. Class Counsel's lodestar was \$1,280,713, which would produce a lodestar multiplier of 3.9 if the requested \$5,000,000 were awarded.²

In our experience, the percentage requested and the lodestar multiplier are within the range of attorney fee awards for similar ERISA cases. In particular, an award of one third of the common fund is very common in ERISA cases. In light of the work performed, the result achieved, the litigation risk assumed by Class Counsel, and the combination of the percentage and the lodestar multiplier, Fiduciary Counselors finds the requested attorneys' fees to be reasonable.

Class Counsel also request reimbursement of \$106,855.66 in litigation costs, including expert fees (\$64,797.50), document hosting and production (\$23,164.32), mediation (\$7,975.00) and deposition transcripts (\$6,745.61). Fiduciary Counselors finds the request for expenses to be reasonable.

Furthermore, Class Counsel seek a Case Contribution Award to Plaintiff Christopher Snider of \$20,000. Mr. Snider actively participated in this action for more than a year and a half. He assisted in Plaintiff's Counsel's investigation, responded to written discovery, sat for deposition, conferred with Counsel on settlement discussions, and was ready and willing to testify at trial against his former employer. Fiduciary Counselors finds the requested service award to be reasonable.

In sum, although the Court ultimately will decide what fees and case contribution awards to approve, we find that the requested amounts are reasonable under ERISA.

VI. PTE 2003-39 Determination

As required by PTE 2003-39, Fiduciary Counselors has determined that:

- **The Court has preliminarily certified the Litigation as a class action for settlement purposes only.** Thus, the requirement of a determination by counsel regarding the existence of a genuine controversy does not apply. Nevertheless, we have determined that there is a genuine controversy involving the Plan. Based on the documents we reviewed and our calls with counsel, we find that there is a genuine controversy involving the Plan

²In calculating their lodestar, Class Counsel have included hours spent on the *Myers* case. We regard this as reasonable because the effort in the *Myers* case, including the discovery and expert reports, greatly facilitated the process of reaching the Settlement. Recognizing that the lodestar multiplier ordinarily is used as a cross-check of the reasonableness of a percentage award, we also note that the lodestar multiplier would not be unreasonable even if some hours from *Myers* were not counted.

within the meaning of the Department of Labor Class Exemption, which the Settlement will resolve.

- **The Settlement terms, including the scope of the release of claims, the amount of cash received by the Plan, and the amount of any attorneys' fee award or any other sums to be paid from the recovery, are reasonable in light of the Plan's likelihood of full recovery, the risks and costs of litigation, and the value of claims foregone.** Plaintiff alleged in his Complaint that Defendants violated their fiduciary duties under ERISA by failing to eliminate the Plan's large holding in Chesapeake common stock, which exposed the Plan and Class Members to an unnecessary and imprudent risk of large losses, especially taking into consideration the Plan's equally undiversified investment in SSE stock, which was in a similar business with similar systemic risks. Plaintiff faced challenges with respect to continuing litigation of the Action. The law with respect to legacy stock funds is extremely limited. Moreover, the few cases that have been litigated have met with limited success. Indeed, this is the first spin-off case of which Plaintiff's counsel or Fiduciary Counselors are aware that has been successfully resolved. In addition, the facts supporting Plaintiff's core allegations were strongly contested by Defendants. Plaintiff and Defendants have vastly different views about Defendants' potential liability and damages. The key question — whether the Defendants, as prudent fiduciaries, should have divested Chesapeake stock by the end of 2014 — is one that would have to be determined through expert testimony. Plaintiff and Defendants each retained experts that provided radically different opinions on this issue. The same is true regarding the amount of damages.

Defendants vigorously denied all Plaintiff's allegations, asserted affirmative defenses and otherwise defended its actions with respect to the prudence of offering Chesapeake stock. Among other arguments, Defendants contended that most 401(k) plans with stock funds for legacy employer stock retained the legacy stock for an extended period and that applying Plaintiff's damages methodology for a divestiture at a later point would have reduced or eliminated the claimed damages, and further that using the Plan's returns during the relevant periods instead of the comparison investments selected by Plaintiff's experts also would have reduced or eliminated the claimed damages. Defendants also asserted that each individual participant was free to sell their Chesapeake Stock at any time, while Defendants froze the fund to new investment.

Continued litigation would have likely resulted in appeals, causing more expense and further delaying resolution. Instead of a drawn-out period of costly litigation, with a risk of no recovery, class members will receive a certain benefit now.

The size of the Settlement is \$15,000,000, a fair and reasonable recovery given the results in numerous similar cases in the last several years, the defenses the Defendants would have asserted, the risks involved in proceeding to trial, and the possibility of reversal on appeal of any favorable judgment. The Settlement Amount represents approximately 26.5% of the reasonable best-case estimate of class-wide damages calculated by Plaintiff's expert.

Given the substantial expense and risk involved in further litigation, the difficulty in prevailing on the merits and establishing damages, and the delay that would have resulted in providing any relief to the Class if the matter had been prolonged through trial and appeal, the amount of the Settlement is reasonable.

Fiduciary Counselors also finds the other terms of the Settlement to be reasonable, including the scope of the release, attorneys' fees, the requested Case Contribution Award to the Class Representative, and the Plan of Allocation.

- **The terms and conditions of the transaction are no less favorable to the Plan than comparable arm's-length terms and conditions that would have been agreed to by unrelated parties under similar circumstances.** As indicated in the finding above, Fiduciary Counselors determined that Class Counsel obtained a favorable agreement from Defendants in light of the challenges in proving the underlying claims. The agreement also was reached after arm's-length negotiations supervised by mediator Robert Meyer.
- **The transaction is not part of an agreement, arrangement or understanding designed to benefit a party in interest.** Fiduciary Counselors found no indication the Settlement is part of any broader agreement between Defendants and the Plan.
- **The transaction is not described in PTE 76-1.** The Settlement did not relate to delinquent employer contributions to multiple employer plans and multiple employer collectively bargained plans, the subject of PTE 76-1.
- **All terms of the Settlement are specifically described in the written settlement agreement and the plan of allocation.**
- **The Plan is receiving no assets other than cash in the Settlement.** Therefore, conditions in PTE 2003-39 relating to non-cash consideration and extensions of credit do not apply.
- **Acknowledgement of fiduciary status.** Fiduciary Counselors has acknowledged in its engagement that it is a fiduciary with respect to the settlement of the Litigation on behalf of the Plan.
- **Recordkeeping.** Fiduciary Counselors will keep records related to this decision and make them available for inspection by the Plan's participants and beneficiaries as required by PTE 2003-39.
- **Fiduciary Counselors' independence.** Fiduciary Counselors has no relationship to, or interest in, any of the parties involved in the litigation, other than the Plan, that might affect the exercise of our best judgment as a fiduciary.

Based on these determinations about the Settlement, Fiduciary Counselors (i) authorizes the Settlement in accordance with PTE 2003-39; and (ii) gives a release in its capacity as a fiduciary of the Plan, for and on behalf of the Plan. Fiduciary Counselors also has determined not to object to any aspect of the Settlement.

Sincerely,



Stephen Caflisch

Senior Vice President & General Counsel