

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO

THOMAS W. SPAUDE AND ANGELA M. SPAUDE, INDIVIDUALLY AND AS CO-TRUSTEES OF THE THOMAS W. SPAUDE AND ANGELA M. SPAUDE TRUST DATED JULY 9, 2003, <i>et al.</i> ,)	CASE NO. 1:17-cv-02120
)	
Plaintiffs,)	JUDGE DONALD C. NUGENT
)	
v.)	
)	
PHILLIPS MURRAH, P.C., <i>et al.</i>)	
)	
Defendants.)	
)	

**ORDER PRELIMINARILY APPROVING SETTLEMENT,
APPROVING NOTICE TO CLASS MEMBERS, AND
SCHEDULING SETTLEMENT APPROVAL HEARING**

Plaintiffs having made an Unopposed Motion for Preliminary Approval of Class Action Settlement between Plaintiffs, individually and on behalf of a Settlement Class (as defined in the Agreement) and Settling Defendant Phillips Murrah, P.C., and the Court having read and considered the Agreement:

WHEREAS, this litigation involves allegations that Settling Defendant and its individual attorneys were involved with and liable for their alleged role in the fraudulent investment scheme perpetrated by Quantum Energy, LLC and/or Quaneco, LLC,

WHEREAS, Settling Defendant and all other Former Defendants deny any wrongdoing or liability relating to any of the allegations made by Plaintiffs and the parties agree that the Agreement shall not be construed or deemed to be evidence or admission of any fault, wrongdoing, or liability by Phillips Murrah or any Former Defendants.

IT IS ORDERED that:

1. The Motion is GRANTED.
2. Unless otherwise specified, terms herein shall be as defined in the Agreement.

Preliminary Approval of the Settlement

3. The Court find that: (a) the proposed Settlement is in the best interests of Class Members and sufficiently fair, adequate, and reasonable to authorize the dissemination of notice of the Settlement to potential Class Members; (b) the Settlement Agreement was negotiated at arm's length by experience counsel acting in good faith; and (c) there has been adequate opportunity for experienced counsel to evaluate the claims and risks at this stage of the litigation.

4. The Court finds that preliminary approval is appropriate and hereby grants preliminary approval of the Settlement subject to final determination following notice and hearing.

Certification of the Settlement Class, Appointment of Settlement Class Representatives and Appointment of Settlement Class Counsel

5. For settlement purposes only and contingent upon Final Approval of the Agreement, the Court finds that the Complaint is properly amended to seek class certification under Federal Rule of Civil Procedure 23(b)(3).

6. For settlement purposes only and contingent upon Final Approval of the Agreement, the Court finds that the requirements of Federal Rule of Civil Procedure 23(a) and 23(b)(3) are met and provisionally certifies the following Settlement Class, as defined as follows:

all investors, including any and all of their respective successors-in-interest, predecessors, representatives, trustees, executors, administrators, heirs, assigns or transferees, immediate and remote, and any person or entity acting for or on behalf of, or claiming under, any of them, and each of them, together with their predecessors and successors and assigns, who have invested in any Quantum or Quaneco offering on or after October 5, 2005, including but not limited to the following Quantum offerings: Quaneco LLC Preferred B Units Offerings dated October 5, 2005 and November 27, 2006; Rich County Overriding Royalty Offering dated November 1, 2007; Quaneco LLC Preferred D Units Offering dated December 15, 2008; Overthrust Overriding Royalty Offering dated February 16, 2009; Crawford Thrust Offering dated April 15, 2010; the Crain 16-4 Offering dated March 1, 2012; Quantum Overriding Royalty and Development Program dated October 22, 2012; Quantum Energy

Drilling Production Program dated February 1, 2011; Quantum Energy Phoenix Program dated March 2, 2015; and Niabora Leasing and Development Program dated January 8, 2014.

7. For the purposes of preliminary approval, the Court finds that the provisional certification of the Settlement Class is warranted in light of the proposed Settlement under the prerequisites of Federal Rule of Civil Procedure 23(a) because: (1) the Members of the Settlement Class are so numerous that joinder is impracticable; (2) there are issues of law and fact common to the Settlement Class; (3) Plaintiffs' claims are typical of the claims of the Settlement Class Members; and (4) Plaintiffs' and Plaintiffs' Counsel will fairly and adequately represent the interests of the Settlement Class Members.

8. For purposes of preliminary approval, the Court finds that the provisional certification of the Settlement Class is warranted in light of the proposed Settlement under Federal Rule of Civil Procedure 23(b)(3) because common issues predominate over any questions affecting only individual Members of the Settlement Class, and settlement of this Action on a class basis is superior to other means of resolving the Action.

9. The Court hereby appoints Plaintiffs Thomas W. Spaude and Angela M. Spaude, Individually and as Co-Trustees of the Thomas W. Spaude and Angela M. Spaude Trust dated July 9, 2003, and Dennis C. Macieski, Individually and as Trustee of the Macieski CRNA PC 401(K) as the Settlement Class Representatives. The Court preliminarily finds that the Settlement Class Representatives will fairly and adequately protect the interests of the Settlement Class because: (1) the interests of the Settlement Class Representatives are consistent with those of the Settlement Class Members; (2) there appear to be no conflicts between or among the Settlement Class Representative and the other Settlement Class Members; (3) the Settlement Class Representatives have been and appear to be capable of continuing to be an active participant in the prosecution and

settlement of this litigation; and (4) the Settlement Class Representative and the Settlement Class Members are represented by qualified, reputable counsel who are experienced in preparing and prosecuting large, complicated class action cases.

10. In making these preliminary findings, the Court has considered, *inter alia*, (1) the interests of the Settlement Class Members in individually controlling the prosecution or defense of separate actions; (2) the impracticality or inefficiency of prosecuting or defending separate actions; (3) the extent and nature of any litigation concerning these claims already commenced; and (4) the desirability of concentrating the litigation of the claims in a particular forum.

11. The requirements of Rule 23(g) of the Federal Rules of Civil Procedure are met and the Court appoints Lydia M. Floyd and James P. Booker of Peiffer, Wolf, Carr & Kane, A.P.L.C., Alan L. Rosca of Rosca Law, LLC, and J. Barton Goplerud and Brian O. Marty of Shindler, Anderson, Goplerud & Weese, P.C. as Settlement Class Counsel for the Settlement Class.

12. At this time, the Court makes no determination regarding the manageability of this litigation as a class action, if this litigation were to go to trial.

CAFA Notice

13. Pursuant to the Settlement Agreement, within ten (10) days after filing with the Court the motion papers seeking preliminary approval of the Settlement, Phillips Murrah shall provide notice of the Settlement to the appropriate state and federal officials as provided in the Class Action Fairness Act, 28 U.S.C. § 1715.

Notice to Potential Class Members

14. The Court finds that the manner, method, and content of the notice specified in the Agreement will provide the best notice practicable to the Members of the Settlement Class and satisfies the requirements of Rule 23 and due process requirements of the United States Constitution. Phillips Murrah and the settlement administrator, Heffler Claims Group (“Heffler”) shall cause direct notice to be sent no later than twenty-one (21) days after the entry of this Order, in a form and content substantially similar to Exhibit C and E to the Agreement, at Settling Defendant’s cost.

15. Within twenty-one (21) calendar days from the date of the Order of Preliminary Approval, Heffler shall also establish the Settlement Website, which shall contain the Long Form Notice in both downloadable PDF format and HTML format, in a form and content substantially similar to Exhibit D to the Agreement.

16. Any Class Member who wishes to be excluded from the Settlement Class must send a written request for exclusion in the manner and to the address provided in the Notice. The Notice will advise Class Members of their right to request exclusion from the Settlement Class. Such opt out rights may be exercised only individually by a Class Member, and not by any other person in a representative capacity, except on behalf of a Class Member who is deceased or legally incapacitated. Requests by Class Members to be excluded from the Settlement Class must be mailed to Heffler at the address set forth in the Notice and must be postmarked on or before no less than 30 calendar days before the Final Settlement Hearing in order to be effective.

17. The Court also preliminarily approves the administration of the proposed Settlement as described in the Agreement and the Allocation Plan for those Class Members who timely submit Claim forms. Claim forms must be submitted to Heffler on or before 60 calendar

days after notice has been sent in order to be considered, which deadline will be stated in the Notice. Those Class Members who timely submit Claim Forms by the deadline specified will be eligible for distribution of compensation only to the extent, in the amount, and in the manner described in the Agreement. If the Court grants Final Approval of the Settlement, the settlement funds will be distributed to or for the benefit of the Class Members in the manner and in the amounts described in the Agreement and the Allocation Plan.

18. A Final Settlement Hearing shall be held before this Court on 4/9, 2019, at 9:00 am a.m., to consider and finally determine:

- a. Whether the Settlement Agreement should be finally approved by the Court as fair, reasonable, and adequate;
- b. Whether and in what amount attorneys' fees should be awarded to Plaintiff's Counsel, as provided in the Settlement; and
- c. Objections, if any, made to the Settlement, or any of its terms.

The Final Settlement Hearing described in this Paragraph may be postponed, adjourned, or continued by order of the Court without further notice to Class Members. No less than 10 days before the Final Settlement Hearing, Plaintiff's Counsel shall file a motion for final approval and a motion for approval of attorneys' fees, expenses and service awards.

19. Any Settlement Class Member who has not requested exclusion from the Settlement Class and who objects to approval of the proposed Settlement may appear at the Final Settlement Hearing in person and through counsel to show cause why the proposed Settlement should not be approved as fair, reasonable, and adequate. However, no person (other than named parties) may be heard at the Final Settlement Hearing, or file papers or briefs in connection therewith, unless on or before 30 days from the Final Settlement Hearing such person has filed

with the Court and served on Plaintiff's Counsel and Defendants' Counsel a timely written notice of intent to object, which must contain or include the following information:

- a. The name, address, telephone number, and signature of the objecting Class Member;
- b. The specific reasons for the Class Member's objections to the Settlement, and a detailed statement of the factual and legal basis for such objections; and
- c. Identify all witnesses, by name, address, and a summary of proposed testimony, who the objecting Class Member may call to testify at the Final Settlement hearing, and describe and produce copies of all evidence such objecting Class Member may offer at the Final Settlement Hearing; and indication whether the objector will attend the Hearing.

Any Class Member who does not file and serve timely notice of intent to object in accordance with this Order shall waive the right to object to the Settlement or to be heard at the Final Settlement Hearing, and shall be forever barred from making any objection to the Settlement.

20. Defendants' Counsel and Plaintiff's Counsel shall promptly furnish to each other copies of any notice of intent to object that comes into such counsel's possession.

21. If the Settlement is finally approved, the Court will enter a Settlement Order and Final Judgment approving the Agreement substantially in the same form and content attached to the Agreement as Exhibit B, and incorporating it as the judgment of the Court, which judgment shall be binding upon all Members of the Settlement Class who have not timely and properly requested exclusion with this Order and the terms of the Agreement.

Other Provisions

22. In the event that the Settlement is validly terminated as provided in the Agreement or Final Approval of the proposed Settlement reflected by the Agreement is not granted by the Court, or a Settlement is approved with terms different than as reflected by the Agreement and that are not agreed to by Plaintiff and Defendants in writing, or the Settlement Order and Final Judgment is reversed or modified on appeal, or entry of a Settlement Order and Final Judgment as provided in the Agreement does not occur for any reason, then the Settlement, the Agreement, all drafts, negotiations, discussions, and documentation relating thereto, and all orders entered by the Court in connection therewith, shall become null and void, and shall not be used or referred to for any purpose in this Action or in any other proceeding. In such event, the Agreement and all negotiations and proceedings relating thereto shall be withdrawn without prejudice to the rights of any of the Parties thereto, who shall be restored to their respective positions as of the date of the execution of the Agreement.

23. In the event that the Settlement does not become final and effective for any reason does not become final and effective for any reasons, nothing in the Agreement, this Order, or proceedings or orders regarding the Settlement shall be construed to prejudice any position that any of the parties may assert in any aspect of the litigation.

24. The Parties are hereby authorized without further approval from the Court to agree upon such amendments or modifications of the Agreement and of all exhibits thereto as shall be consistent in all respects with this Order and do not limit the rights of Class Members.

Date:

January 3, 2019

Donald C. Nugent
Donald C. Nugent, JUDGE