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SUPERIOR COURT OF WASHINGTON IN AND FOR KING COUNTY

SHIVA Y. STEIN, individually and on behalf
of all others similarly situated,

No. 15-2-20458-1SEA

Plaintiff,

-against-

**PLAINTIFF’S RESPONSE TO
OBJECTION BY LAWRENCE B.
DVORES TO PLAINTIFF’S FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT**

SYMETRA FINANCIAL CORPORATION,
LOWNDES A. SMITH, PETER S. BURGESS,
DAVID T. FOY, LOIS W. GRADY, SANDER
M. LEVY, ROBERT R. LUSARDI, THOMAS
M. MARRA, SUMITOMO LIFE INSURANCE
COMPANY, and SLIC FINANCIAL
CORPORATION,

Defendants.

I. INTRODUCTION

On April 20, 2016, Shiva Y. Stein (“Plaintiff”) received a purported objection to the proposed class action settlement (the “Settlement”) of this action (the “Action”) (which Plaintiff promptly filed with the Court) from stockholder Lawrence B. Dvores (“Mr. Dvores”) (the “Dvores Objection”). The Dvores Objection – *the only objection received* – reflects a lack of understanding about the nature of Plaintiff’s claims, the relief obtained in the Settlement, and the risks of continued litigation. Nothing in the objection casts any serious doubt on the reasonableness of the Settlement. The Settlement brings to an end a hard-fought litigation which provided the settlement class (the “Class”) with substantial benefits discussed at length in

1 Plaintiff's Memorandum in Support of Final Approval of Class Action Settlement and Application
2 for an Award of Attorneys' Fees and Reimbursement of Expenses ("Plaintiff's Final Approval
3 Memorandum"). The Court should overrule the objection and grant final approval to the
4 Settlement.

6 II. ARGUMENT

7 The Dvores Objection sets forth the following core arguments in opposition to the
8 Settlement and specifically to Plaintiff's request for attorneys' fees: (1) Plaintiff's counsel failed
9 to secure any cash benefit to the Class or stop the merger; (2) Plaintiff's counsel failed to obtain
10 disclosures that caused Symetra stockholders to approve the merger; and (3) Plaintiff's counsel
11 failed to provide website access for the Class to review Plaintiff's complaint and all other public
12 filings related to the Action. Each of these arguments are without merit.

13 *First*, as an initial matter, Mr. Dvores opposes the Settlement, claiming that it is "wasteful
14 and reckless litigation..." Dvores Objection V11 [Dkt. 57]. Yet it appears that he did not review
15 Plaintiff's complaint[s] or any other public filings of pleadings related to this case because he
16 requests access to it. Dvores Objection V1. It was available on Plaintiff's counsel's websites, and
17 Plaintiff's counsel happily would have provided on request. Without reviewing Plaintiff's
18 complaints and other pleadings in the Action, Mr. Dvores has no understanding of the claims
19 Plaintiff has asserted in this Action. Worse, Mr. Dvores appears to have not even reviewed the
20 supplemental disclosures received by the Class.

21 *Second*, Mr. Dvores claims that Plaintiff's counsel failed "to prove that the merger share
22 price was inadequate," notwithstanding Mr. Dvores' apparent indifference to the share price he
23 received. The Dvores Objection states, "...[I] sold these shares for \$31.545 per share on the same
24 date following the August 11th merger announcement which is the subject of this class action."
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1 Indeed on August 11, 2015, Symetra stockholders had not yet approved the merger consideration
2 of \$32.00 per share in cash and a \$0.50 special dividend. In fact, the merger was not approved by
3 stockholders until November 5, 2015. Further, Plaintiff’s initial complaint was not filed until
4 August 20, 2015, and Symetra’s definitive proxy statement was not filed with the SEC until
5 September 30, 2015. By selling his shares the same day that the merger was announced, Mr.
6 Dvores indicated that he was not concerned with getting the best possible price for his shares or
7 stopping the merger, undercutting his arguments regarding the fairness of the Settlement.
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9 *Third*, the Dvores Objection expressed a belief that the type of benefit that gave rise to the
10 Settlement – *i.e.*, relief in the form of curative disclosures – does not warrant payment of
11 attorneys’ fees. *See* Dvores Objection 1 and 111 (Dkt. 57). Statements such as these are reflective
12 of a general disdain of non-monetary class action settlements, rather than specific concerns with
13 respect to the Settlement at issue. However, courts have confirmed the value of non-economic
14 relief, and the importance of incentivizing plaintiffs’ attorneys to challenge corporate wrongdoing
15 even if such challenges result in non-economic benefits. It is well established within this
16 jurisdiction and others that attorneys’ fees are justified even where the benefit achieved by a
17 settlement is not economic or monetary¹.
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21 ¹*See, e.g., IBEW Local 164 Pension Fund v. Hewitt Assocs. Inc.*, No. 10 CH 31612 (Cook Cnty. Ill. Cir.
22 Ct. Feb. 15, 2011) slip op. at 4 (\$850,000 for additional corporate disclosures); *Monzenter v. Nalco*
23 *Holding Co., et al.*, Case No. 2011-MR-001043 (Du Page Cnty. Ill. Cir. Ct. June 20, 2012), slip op. at 5
24 (\$750,000 for additional corporate disclosures); *Tandycrafts, Inc. v. Initio Partners*, 562 A.2d 1162, 1165
25 (Del. 1989) (“benefit *need not be measurable in economic terms* . . . [to] justify an award of counsel fees”
26 (emphasis added)); *In re Celera Corp. S’holder Litig.*, C.A. No. 6304, 2012 WL 1020471, at *8 (Del.
Ch. Mar. 23, 2012) (“where a class action settlement confers an ascertainable benefit upon the class,
whether monetary or therapeutic, class counsel may request a reasonable award of attorneys’ fees for
their efforts in creating the benefit” (emphasis added)), *aff’d in part, rev’d in part*, 59 A.3d 418 (Del.
2012). Indeed, in *In re Celera*, the Delaware Court of Chancery – which likely has had more occasion
to consider the propriety of attorneys’ fees in successful shareholder actions than any other court in the
country – awarded \$1.35 million to plaintiffs’ counsel for securing entirely non-economic relief. 2012
WL 1020471, at *33.

1 Moreover, this argument ignores the fact that the Company produced to Plaintiff
2 confirmatory discovery including, among other things, Board meeting minutes and valuation
3 analyses relating to the merger. Additionally, Plaintiff’s counsel conducted a deposition of the
4 Company’s President and CEO. Furthermore, the supplemental disclosures that Plaintiff’s
5 litigation caused for Symetra stockholders is indeed material and enabled Symetra stockholders
6 to make an informed decision on the merger. *See* Plaintiff’s Final Approval Memorandum.
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8 *Fourth*, Mr. Dvoves’ assertion that “...the disclosures obtained by plaintiff’s counsel
9 demonstrate the illusory and negligible benefit of such disclosures for class members...” Dvoves
10 Objection 111 (Dkt. 57). This assertion is contradicted by black letter law cited in Plaintiff’s Final
11 Approval Memorandum and the affidavit of Plaintiff’s retained valuation expert. *See* Dkt. 52 at
12 Exhibit 6. Mr. Dvoves can only speak for himself and the 200 shares he owned during the class
13 period.² He cannot speak for the scores of class members – including Plaintiff herself – who
14 apparently found value in the disclosures.
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16 In fact, despite notice by mailing and publication, the Dvoves Objection was the only
17 objection received, thus indicating overwhelming Class support for the Settlement. *See Rome v.*
18 *Archer*, 197 A.2d 49, 58 (Del. 1964) (approving settlement agreement that was ratified by a very
19 large majority of the stockholders). As of April 22, 2016, a total of 21,497 notices were mailed to
20 members of the Class. *See* Dkt. 58. Relative to the hundreds or thousands of individual class
21 members and 116 million outstanding Symetra shares, the *single* Dvoves Objection representing
22 200 shares sold before the stockholder vote are *de minimis*.³ Mr. Dvoves’ assertion is further
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25 ² Mr. Dvoves only presented proof of his stock sale on the first day of the Class period. Plaintiff does not
26 have any information as to how or when those shares were acquired.

³ *See Williams v. Rohm & Haas Pension Plan*, No. 4:04-CV-0078, 2010 WL 1490350, at *3 (S.D. Ind.
Apr. 12, 2010) (approving settlement and finding that 150 objectors out of a settlement class of 18,000

1 undermined by his request to have access to Plaintiff's Complaint, which implies that he has not
2 read it. Dvores Objection V1 (Dkt. 57).

3 *Fifth*, Mr. Dvores' argument that Plaintiff's counsel failed to provide website access for
4 the Class to review Plaintiff's complaint and additional public filings related to the Action is
5 simply inaccurate. Had Mr. Dvores checked either the Pomerantz LLP
6 (<http://pomerantzlawfirm.com/news-accomplishments/symetra>) or Keller Rohrback L.L.P.
7 (<http://krcomplexlit.com/currentcases/shiva-y-stein-v-symetra-financial-corporation-et-al/>)
8 websites, he would have found the information he sought. Indeed, pursuant to the Court's
9 February 12, 2016 Preliminary Approval Order, Plaintiff's counsel created webpages that
10 contained important documents pertaining to the Action including a copy of Plaintiff's amended
11 complaint, Memorandum of Understanding, Notice of Class Action Settlement, Stipulation and
12 Agreement of Compromise, Settlement and Release dated April 2, 2016, and as revised on April
13 7, 2016, and Order Preliminary Approving the Settlement. Plaintiff's counsel also published a
14 press release on April 4, 2016 over PRNewswire directing class members to the websites.
15 Moreover, Mr. Dvores never contacted Pomerantz or Keller Rohrback to ask for the information
16 he sought, and thus never took the time to educate himself in order to make a reasoned objection.
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19 III. CONCLUSION

20 For the foregoing reasons, the Dvores Objection to the Settlement should be overruled
21 and the Court should grant final approval of the Settlement.
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24 is a "rather small number," which indicates "significant support" for the settlement), *aff'd*, 658 F.3d 629
25 (7th Cir. 2011); *In re Austrian & German Bank Holocaust Litig.*, 80 F. Supp. 2d 164, 175 (S.D.N.Y.
26 2000) (approving settlement in the face of very few objections); *Horton v. Merrill Lynch, Pierce, Fenner
& Smith*, 855 F. Supp. 825, 830 (E.D.N.C. 1994) (overruling objections to settlement where "the
discovery conducted by class counsel . . . was sufficient to allow counsel and the court to evaluate the
limited class claims").

1 DATED this 28th day of May, 2016.

2 KELLER ROHRBACK L.L.P.

3 By: /s/Karin B. Swope

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10 Gustavo F. Bruckner (Admitted Pro Hac Vice)

11 Samuel J. Adams (Admitted Pro Hac Vice)

12 Anna Karin F. Manalaysay (not admitted in WA)

13 600 Third Avenue

14 New York, NY 10016

15 (212) 661-1100

16 *Attorneys for Plaintiff*

1 **CERTIFICATE OF SERVICE**

2 I, hereby certify that on the 3rd day of May, 2016, a copy of the foregoing was
3 electronically filed and served via the King County E-Filing system which will send notification
4 of such filing to following Defense counsel:

5 Stephen M. Rummage
6 Brendan T. Mangan
7 Davis Wright Tremaine LLP
8 1201 Third Avenue, Suite 2200
9 Seattle, WA 98101

10 Steven Fogg
11 David Edwards
12 Corr Cronin Michelson Baumgardner Fogg & Moore, LLP
13 1001 Fifth Avenue, Suite 3900
14 Seattle, WA 98154

15 I hereby certify that on the 3rd day of May, 2016, a copy of the foregoing was emailed
16 and mailed to the following Defense counsel:

17 Sandra Goldstein (sgoldstein@cravath.com)
18 Michael Paskin (mpaskin@cravath.com)
19 Cravath Swaine & Moore, LLP
20 825 Eighth Avenue
21 New York, NY 10019

22 Joshua Slocum (jslocum@stblaw.com)
23 Peter Kazanoff (pkazanoff@stblaw.com)
24 Simpson Thatcher & Bartlett LLP
25 425 Lexington Avenue
26 New York, NY 10017

I hereby certify that on the 3rd day of May, 2016, a copy of the foregoing was mailed to
the following objector:

Lawrence B. Dvores (Ldvores@yahoo.com)
28 Sherbrooke Parkway
Livingston, NJ 07039

I certify under penalty of perjury under the laws of the State of Washington that the

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foregoing is true and correct.

DATED this 3rd day of May, 2016.

s/Karin B. Swope
Karin B. Swope, WSBA #24015