IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE CHENIERE ENERGY, INC. STOCKHOLDERS LITIGATION	)	CONSOLIDATED C.A. No. 9710-VCL
IN RE CHENIERE ENERGY, INC.	)	C.A. No. 9766-VCL

DECLARATION OF JEFFREY W. GOLAN IN SUPPORT OF MOTION TO APPROVE SETTLEMENT AND APPLICATION FOR FEES AND EXPENSES

1. I am a member of the law firm, Barrack, Rodos & Bacine ("BR&B"), one of the law firms appointed as Co-Lead Counsel in the above-captioned consolidated case. My application for admission to practice in the above-captioned consolidated action *pro hac vice* was granted on June 2, 2014.

How We Came to Investigate This Case and the Result of the Investigation

2. On April 29, 2014, BR&B's Director of Institutional Research noted the following article from Bloomberg, and circulated it to me and other BR&B attorneys:

> **Cheniere CEO Compensation for 2013 Doubles to $142 Million**
> 2014-04-28 23:22:18.174 GMT
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> By Zain Shauk
>
> April 28 (Bloomberg) -- Cheniere Energy Inc., the U.S. natural gas export company that's never posted an annual profit, more than

> doubled the compensation of its chief executive officer to $141.9 million last year.
>
> CEO Charif Souki's 2013 compensation was one of the highest in corporate America, and more than five times that of Exxon Mobil Corp. CEO Rex Tillerson, who runs the world's largest publicly traded energy company with a profit of $32.6 billion last year, according to summary compensation tables published in regulatory filings.
>
> Tillerson received total 2013 compensation of $28.1 million, while CEO John Watson of Chevron Corp., the second- largest U.S. energy company, earned $24 million, according to the summary tables. All amounts include stock awards.
>
> Last year, Souki's total compensation included stock awards valued at $132.9 million, according to a filing today. His 2012 compensation of $57.5 million included $49.2 million in stock awards. ...

3. We immediately commenced an investigation of the Proxy filing that included this information. Recognizing the burdens imposed by Delaware law on excessive compensation claims, we sought to determine whether the stock awards to Cheniere's CEO Charif Souki, other senior executives, board members and consultants went beyond the Company's shareholder-approved plans.

4. Due to the extraordinary nature of the stock compensation that this Company was awarding its top executives, it occurred to us that stockholders must have been asked several times in the last few years to increase the amount of shares available for such awards. We noted that the stockholder vote taken in 2011 to establish the Cheniere 2011 Incentive Plan ("2011 Plan") with 10 million reserve shares passed with 23,459,610 "for," 7,320,515 "against," 209,084 "abstentions,"

and 19,308,606 "broker non-votes." Since Mr. Souki was awarded 6 million shares from the 2011 Plan just in 2013, we realized that the shareholders must have been asked to add shares to the 2011 Plan soon after this first vote.

5. We uncovered that through a Proxy issued in December 31, 2012, the Company convened a special meeting specifically to address the depleted 2011 Plan share reserve and asked Cheniere stockholders to more than triple the share reserve by adding 25 million shares to the 2011 Plan on February 1, 2013 (the "February 2013 Vote"). The vote totals for the February 2013 Vote were 77,011,739 "for", 57,907,345 "against" and 36,252,581 "abstentions."

6. From our prior research and experience with Delaware law, our understanding was that the Delaware default rule is that "abstentions" count as "no" votes unless a company's bylaws or certificate of incorporation provides a different standard. Our legal research into Delaware cases and authorities on this subject confirmed our belief. On this basis, the Company had received just 45% "yes" votes in favor of the 25 million share reserve increase proposal, which was less than a majority and would mean that the proposal had not, in fact, passed. We then researched Cheniere's bylaws and certificate of incorporation to find out how the Company's documents treated abstentions. This led to the discovery of two key facts.

7. We discovered the first of these facts by searching through Cheniere's 2013 Form 10-K, filed on February 21, 2014, which included Cheniere's then-current bylaws among the exhibits to the 10-K. Since the relevant bylaw for stockholder voting purposes was last amended on May 6, 2005 and was almost identical to the Delaware default rule at 8 *Del. C.* § 216(2), this confirmed our belief that the February 2013 Vote was miscounted and no majority was secured.

8. We also checked the Company's website for its bylaws. This led to a second key discovery, which was that the Company's bylaws online had completely different language concerning the treatment of abstentions than the bylaws in effect for the February 2013 Vote and that had been included as an exhibit in the 2013 10-K. The bylaw had been amended by the Cheniere board on April 3, 2014, after issuance of the 2013 10-K and just weeks before the board proposed to stockholders that they approve an additional 30 million share increase to the 2011 Plan share reserve. In our view, the bylaw amendment dramatically changed the voting standard applicable to stockholder votes undertaken pursuant to a stock exchange requirement, which included votes on stock-based compensation plans or material amendments to such plans.[1] The amendment set in new section 2.8 also appeared to allow the board, on an ad hoc basis, to decide whether it would count abstentions n accordance with its own interests in any particular

[1] A comparison of the former bylaw section 2.7 and the amended bylaw section 2.8 is attached hereto as Exhibit 1, with emphasis added.

stockholder vote – possibly even after a vote had occurred. The new bylaw provision thus instituted a new voting standard that sought to exclude abstentions – which had been the reason, in our view, that the board had not obtained stockholder approval for Amendment No. 1 in the February 2013 Vote – from consideration when determining the voting results for Amendment No. 2 and the 2014-2018 LTIP.

9. These facts suggested to us that the Company's board and management may have been aware that they had miscounted the February 2013 Vote and that by changing the bylaws in April 2014, they may have been seeking to (a) conceal the miscounting of the prior vote and (b) make it easier for the 30 million share reserve increase proposal to pass, given the less-than-majority support for the 25 million share reserve increase at issue in the February 2013 Vote.

10. We further examined the Company's proxy for its upcoming June 12, 2014 annual meeting, in which the Company was requesting a new 30 million share increase to the 2011 Plan share reserve. We noted that nowhere in the 2014 proxy statement requesting this increase did it mention the change to the Company's bylaws dealing with the treatment of abstentions. The 2014 proxy statement did fix a definition of "abstentions" that conflated them with "broker non-votes" – again suggesting that the Company may have been aware it had made

a previous error in counting the February 2013 Vote. Instead of acknowledging its previous error, however, the 2014 proxy statement stated several times that the February 2013 Vote had passed with a majority in favor.

11. Based on our research and analysis, we further investigated potential grounds for asserting direct as well as derivative claims, including for demand futility purposes, as reflected in the complaint we filed on May 29, 2014.

12. In short, based on our investigation and the Company's disclosures, we concluded that the vast bulk of the compensation provided to Cheniere's CEO Souki, other senior executives, board members and consultants in 2013 had come through the issuance of stock awards that exceeded the total number of shares that could be awarded under the stockholder-approved 2011 Plan, and that the proxy statement for the upcoming June 12, 2014 stockholder vote contained false and misleading statements that should be corrected before the Company went forward with that vote. We further concluded that the board's amendment of the bylaws concerning the counting of abstentions might be challenged as having been passed for improper purposes, and because it purported to allow the board to make decisions on how to count abstentions on a vote-by-vote basis, depending on the issue presented in board or shareholder-sponsored proposals.

Filing the *Jones* Complaint and Brief in Support of the Motion to Expedite

13. In May 2014, I met with Peter Andrews, a partner of Andrews & Springer LLC ("Andrews & Springer"), and discussed with him the theories that we had been developing with respect to Cheniere. We followed up that meeting with continued dialogue about the bases for our determinations set forth above.

14. We were retained by Cheniere stockholder, James B. Jones, a firefighter for 23 years who had held his stock in Cheniere continuously from before the time the 2011 Plan was proposed and voted on by stockholders, through the time of the December 2012 proxy and the February 2013 Vote, and who has held Cheniere stock to the present. Our two firms continued to research and further develop the case against Cheniere, its CEO, five other highly compensated senior executives, and the members of the board, and ultimately filed the *Jones* complaint on Thursday, May 29, 2014. In that complaint, we alleged, *inter alia,* that Cheniere's management team and board breached the terms of the Company's bylaws as well as their fiduciary duties to the Company and its stockholders.

15. Through the complaint and accompanying motions to expedite proceedings and for injunctive relief, we also sought to enjoin the upcoming stockholder vote on June 12, 2014, through which the board was seeking stockholder approval for a 30 million share increase for future stock awards and approval of the 2014-2018 LTIP, until Defendants made full and fair disclosures

about the previous stock awards, the February 2013 Vote, the then-current share reserve increase proposal, and the actions the board took in April 2014 to amend the bylaws.

16. At the same time that we were preparing the complaint for filing, we were also working on a brief in support of the motion to expedite proceedings, a brief in support of an eventual motion for injunctive relief, and a narrowly-tailored first set of document requests to be served on defendants to obtain board materials relating to the 2011 Plan, the February 2013 Vote, the bylaw changes made by the Board in April 2014, and the Proxy issued for the upcoming shareholder vote on June 12, 2014, as well as the results of the February 2013 Vote.

17. On Friday, May 30, 2014, after having conducted extensive research with respect to the actions taken by Cheniere's board, the bylaws under which the February 2013 Vote was taken, the board's subsequent action to change the bylaws for the upcoming June 12, 2014 vote, and the past stock awards made to the Company's CEO, other senior executives, board members and consultants, we completed and filed the brief in support of plaintiff's motion to expedite proceedings, and attached to the brief plaintiff's first set of document requests. We included in the brief in support of the motion to expedite relevant portions of the research and writing that we had drafted for an eventual injunction motion brief.

18. We filed the brief in support of the motion to expedite late that Friday afternoon, and also provided a copy of the brief – along with the complaint and document request – to counsel who had identified themselves as representing at least certain of the defendants in the case. We had learned of their identity on that Friday, after Mr. Andrews made a series of telephone calls and sent emails to the Company's general counsel, who then referred us to Mr. Welch of the Skadden Arps firm.

19. Over the weekend of May 31 – June 1, 2014, we continued to work on this case. We began to map out a more comprehensive set of document requests, we started work on a set of interrogatories that would uncover whether the Defendants intended to assert a reliance on advice of counsel defense (which, in our view, would waive any privilege for withholding documents based on attorney-client privilege), and we started compiling information for the issuance of subpoenas to pertinent non-parties.

The Company Postpones the Stockholder Vote Due to the *Jones* Action

20. On Monday, June 2, 2014, at approximately 8:45 a.m., I received a telephone call from Edward Welch and Susan Saltzstein, both of whom I knew from prior cases. During that call, Mr. Welch and Ms. Saltzstein said they were calling to give me a head's up on the Company's filing of a Form 8-K that postponed the Annual Meeting of Stockholders, which was to include votes on the

board's proposals regarding Amendment No. 2 and the 2014-2018 LTIP, from June 12 to September 11, 2014. We also discussed during that call that the parties should alert the Court of the postponement of the Annual Meeting, which would "take the heat off" the Court on having to rule quickly on the motion to expedite.

21. In fact, earlier that morning, the case litigation team at BR&B and Andrews & Springer had noted the filing of the Company's Form 8-K filing, at: http://www.sec.gov/Archives/edgar/data/3570/000119312514220800/d737843d8k.htm. The Form 8-K disclosed that the Company would "postpone the 2014 Annual Meeting of Stockholders of the Company, previously scheduled to be held ... on Thursday, June 12, 2014, ***in light of a complaint that has been filed in the Delaware Court of Chancery of the State of Delaware styled Jones v. Souki, et al., C.A. No. 9710-VCL (Del. Ch.) and plaintiff's request to expedite proceedings before the June 12th Annual Meeting***." [Emphasis added.] The Company announced that its 2014 Annual Meeting had been postponed until September 11, 2014, and that formal notice setting forth the exact location and time of the rescheduled meeting will be mailed to stockholders "in due course."

22. Had we not investigated, researched, crafted and filed the *Jones* complaint and brief in support of plaintiff's motion to expedite proceedings, none of the alleged misconduct – including the granting of stock awards without, in our view, appropriate shareholder approval – would have come to light. Further, based

on the Company's own Form 8-K filing on June 2, 2014, it is evident that had we not filed the *Jones* case, the Company would not have postponed its Annual Meeting of Stockholder from June 12, 2014 to September 11, 2014, and would instead have presented to Cheniere stockholders for approval the board's proposals to add another 30 million shares to the 2011 Plan's share reserve and to enact a 2014-2018 LTIP – both of which would have been determined under the bylaw enacted by the board in early April 2014 that changed the applicable voting standard from a majority of the shares present and entitled to vote (under which abstentions are counted as "no" votes) to a majority of the votes cast standard (under which abstentions are not counted within the vote totals).

23. The decision to postpone the stockholder vote scheduled for June 12, 2014 was, in our view, an extraordinary action by the Company, and was perceived as such in various press articles and blog postings. Such articles include:

> *A New Twist in the Case of the $142 Million CEO*, Tom Gara, The Wall Street Journal (June 2, 2014), http://blogs.wsj.com/corporate-intelligence/2014/06/02/a-new-twist-in-the-case-of-the-142-million-ceo/
>
> *Cheniere Cancels Annual Meeting, Citing Suit Over Compensation*, Daniel Gilbert, The Wall Street Journal (June 2, 2014), http://online.wsj.com/articles/cheniere-cancels-annual-meeting-citing-suit-over-compensation-1401745409
>
> *Investors Sue Cheniere, Alleging Improper Executive, Director Stock Awards*, Sean Sullivan, SNL.com (June 3, 2014), http://www.snl.com/InteractiveX/Article.aspx?cdid=A-28271852-13607

Cheniere's Delayed Shareholder Meeting Signals 'Potential" Backlash Over Executives' Pay, Oil and Gas Investor.com (June 4, 2014), http://www.oilandgasinvestor.com/Finance-Industry-News/Chenieres-Delayed-Shareholder-Meeting-Signals-Potential-Backlash-Executives-Pay_134435

Company Postpones its Annual Meeting Due to Lawsuit over Stock Plan and Disclosures, Mike Melbinger, Compensation Standards (June 4, 2014), https://www.compensationstandards.com/login/member.aspx?ReturnUrl=%2Fmember%2FBlogs%2Fmelbinger%2F2014%2F06%2Fcompany-postpones-its-annual-meeting-due-to-lawsuit-over-stock-plan-and-disclosures.html (subscription required).

Shareholders Challenge Cheniere Stock Awards, Olivia Pulsinelli, Houston Business Journal (June 4, 2014), http://www.bizjournals.com/houston/news/2014/06/04/shareholders-challenge-cheniere-stock-awards.html?page=all

Suit Alleges Cheniere Execs Got Unapproved Stock Awards, Collin Eaton, Fuel Fix.com (June 4, 2014), http://fuelfix.com/blog/2014/06/04/lawsuit-cheniere-execs-enriched-themselves-on-unapproved-stock-awards/

More Scrutiny, Still Spectacular, Conrad De Aenlle, The New York Times (June 7, 2014), http://www.nytimes.com/2014/06/08/business/average-total-pay-for-most-highly-paid-executives.html?_r=0

Shareholder Lawsuit About Compensation Plan Derails Shareholder Vote, Jill Radloff, JDSupra.com (June 9, 2014), http://www.jdsupra.com/legalnews/shareholder-lawsuit-about-compensation-p-25698/

Investors Claw Back in Cheniere Compensation Fight, Collin Eaton, The Houston Chronicle (June 15, 2014), http://www.houstonchronicle.com/business/energy/article/Investors-claw-back-in-compensation-fight-at-5551788.php

Plaintiffs' Counsel's Continuing Work in the Case

24. While the postponement of the annual stockholder meeting for three months meant that we would not need to seek an immediate hearing with the Court on the motion to expedite, it did not mean in our view that the prosecution of this case could be done on a leisurely basis. To the contrary, we continued to work diligently on the case. We prepared a more comprehensive second set of document requests and continued work on a first set of interrogatories relating to any advice of counsel reliance defense that the Defendants might assert, which were served on June 4, 2014. We further prepared and began to serve on Friday, June 6, 2014, a series of subpoenas on three compensation consultants retained by the Company, its board or the compensation committee over the years (Deloitte Consulting LLP, Farient Advisors, and Pearl Meyer & Partners) and on two firms that provided services to the Company in connection with stockholder votes and proxies (Morrow & Co. LLC and Broadridge Financial Solutions Inc.).

25. And we also continued to investigate the SEC filings made by the Company in connection with the February 2013 Vote, and the reasons why no "broker non-votes" were recorded in the February 2013 Vote.

26. During our prosecution of this matter, I also received a call from Mark Lebovitch, of Bernstein Litowitz Berger & Grossmann LLP ("BLBG"), who had read about the case and the relief we had been able to achieve through the filing of

our complaint and motion to expedite brief. Mr. Lebovitch stated that he would shortly be retained to represent a Cheniere stockholder, and was reaching out to see if we could reach an agreement to prosecute the case together, acknowledging the time, energy and creativity that we had already put into the case. After a series of discussions concerning the action, BR&B, Andrews & Springer, and BLBG reached an agreement relating to the joint prosecution of the *Jones* case and the *Maguire* case filed on June 6, 2014 by BLBG and Andrews & Springer.

27. On Saturday, June 7, 2014, we notified Mr. Welch that we would be seeking to consolidate the two cases and propose a Co-Lead Counsel structure consisting of the three firms.

28. With the filing of the second case and the agreement reached among the three filing firms, on Monday, June 10, 2014, we presented the Court with a Stipulation and [Proposed] Order of Consolidation and Appointment of Co-Lead Counsel. Upon request from the Court, on June 11, 2014, we presented the Court with the same filing in the form of a [Proposed] Order, which was granted on June 11, 2014.

29. We also sought to move the case forward toward an injunction motion hearing that could be scheduled to take place before the September 11, 2014 vote. After my call with Ms. Saltzstein and Mr. Welch on Monday, June 2, 2014, the three of us had a follow-up call on Tuesday, June 3, 2014, during which the

Skadden Arps attorneys said that they would be sending me a proposed case schedule within a day or two. Ms. Saltzstein sent a proposed case schedule late in the day on Thursday, June 5, 2014, to which I responded – on behalf of both plaintiffs and the three plaintiffs' firms in the case to that point – via an email to Defendants' counsel on Monday, June 9, 2014. Hearing that Defendants were sorting out certain representation issues, we continued to press Defendants' counsel on reaching agreement on such a case schedule on Tuesday, June 10, Thursday, June 12, and Friday, June 13, 2014, when Mr. Andrews was told that they would be in a position to show "significant movement" on Monday, June 16, 2014.

The *Shenker* Complaint Filed June 13, 2014

30. On Friday, June 13, 2014, there was a third complaint filed, captioned *Shenker v. Souki, et al.,* C.A. No. 9763. Pursuant to paragraph 8 of the Order entered June 11, 2014, Mr. Andrews informed the Court of the filing of this related complaint, noting our belief that the new case should be consolidated as part of the Consolidated Action and providing a proposed Consolidation Order for the new case. As required by the June 11, 2014 Order, he also sent a copy of the Order of June 11, 2014 to counsel for plaintiff Shenker.

31. The *Shenker* complaint asserted claims against the same group of defendants named in the *Jones* complaint; asserted similar breach of contract and

breach of fiduciary duty direct claims as in the *Jones* complaint as well as similar breach of contract, breach of fiduciary duty and unjust enrichment derivative claims as in the *Jones* complaint.

32. On June 20, 2014, after discussions with counsel for plaintiff Shenker, counsel for plaintiffs in the three filed cases reached an agreement on a proposed leadership for plaintiffs in the Consolidated Action, submitting a [Proposed] Order for Appointment of Co-Lead Counsel that would provide, if approved by the Court, for appointment of BR&B, Andrews & Springer, BLBG and Grant & Eisenhofer as the plaintiffs' co-lead counsel. The Court granted the [Proposed] Order later that day.

Cheniere Files Its Section 205 Application and Seeks to Stay the Shareholder Lawsuits

33. On June 16, 2014, Cheniere filed a Verified Application Pursuant to 8 *Del. C.* § 205 (the "Application"), and sought to stay proceedings in the consolidated shareholder action. In its filing, Cheniere took the position that the February 2013 Vote had been conducted in accordance with Delaware law, the company's bylaws and the rules of the NYSE MKT LLC, the former AMEX exchange on which Cheniere shares are listed and trade. Cheniere sought judgment in its favor on two grounds: (1) that, as a matter of law, the February 2013 Vote had been conducted in accordance with the Company's bylaws and was sufficient to pass the 25 million share proposal (Count I); and (2) that, pursuant to

the discretion afforded by § 205, notwithstanding any defect in the issuance of the 25 million shares, whether occurring in the past or future, the Court should declare the issuance valid (Count II).

34. Following the filing of the Application, the parties presented their positions, via letters to the Court, on the Company's motion to stay the stockholder litigation and proceed with the briefing of a motion the Company sought to file in support of Count I of the Application, and on the stockholder plaintiffs' request that the Court enter a case management order in the consolidated stockholder action. In that connection, on June 23, 2014, the Company disclosed in a letter to the Court that it would not be submitting either the proposal to place an additional 30 million shares into the 2011 Plan's share reserve or the proposal with respect to the 2014-2018 LTIP at the September 11, 2014 Annual Meeting, as had been initially proposed in the Proxy issued on April 28, 2014. [The financial press reported on this filing in articles published on July 1, 2014,[2] and the Company

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[2] *See* Daniel Gilbert, "Cheniere Energy Cancels Proposed Compensation Plan: Decision Follows Shareholder Suits Protesting Previous Stock Grants to Employees," The Wall Street Journal (July 1, 2014) ("The company made the disclosure June 23 to a Delaware court, following shareholder lawsuits that said a previous Cheniere plan improperly awarded stock to employees last year. The plaintiffs also sought to block the company from voting on the new compensation plan at its annual meeting last month. That prompted Cheniere to postpone the vote until September."); Zain Shauk, "Cheniere Scraps Stock Awards Plan Following Lawsuit," Bloomberg News (July 1, 2014) ("Cheniere, which delayed its annual meeting by three months following the legal challenge, said in a court

confirmed this decision in a Definitive Proxy Statement filed with the SEC on July 25, 2014.]

35. On June 25, 2014, the parties appeared before the Court for an in-Court Scheduling Conference. After the parties presented their positions to the Court, and responded to the Court's questions and observations, the Court determined that the consolidated stockholder action should be stayed pending expedited briefing by the parties on the motion the Company sought to file in support of its position that, as a matter of law, the February 2013 Vote had been conducted in accordance with the Company's bylaws and was sufficient to pass the 25 million share proposal (Count I).[3]

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filing that it would cut proposals from a shareholder ballot to add 30 million shares to the pool of awards available for executive bonuses. The natural gas export company, which has never generated an annual profit, granted CEO Charif Souki 6.3 million stock units valued at $133 million in 2013 as part of a $142 million compensation package. The 30 million shares that Cheniere had proposed adding to the pool are valued at more than $2.19 billion, according to yesterday's closing price of $73."); Collin Eaton, "Cheniere Strikes LNG Deals, Backs Down On Pay: Company Won't Ask Shareholders to OK $2.2 Billion For Top Executives," Houston Chronicle (July 1, 2014) ("Cheniere Energy, facing a shareholder lawsuit over 'excessive' executive compensation paid out last year, said in court filings last week it wouldn't seek investors' approval of another round of stock awards.").

[3] On June 25, 2014, a fourth complaint was also filed by Kayann Davidoff, on behalf of herself and all other similarly situated stockholders of Cheniere, and derivatively on behalf of Cheniere. The case, *Davidoff v. Souki, et al.*, C.A. No. 9825-VCL, was thereafter prosecuted along with and under the leadership structure of the three previously consolidated cases.

Proceedings on the Company's Motion for Judgment as a Matter of Law on Count I of the Application

36. Pursuant to the schedule set at the Conference, the Company filed its motion and brief in support of the motion on July 11, 2014; the stockholder plaintiffs/interveners filed their opposition brief on July 25, 2014; and the Company filed its reply brief on August 1, 2014.

37. After conducting some additional research as a result of some new authorities presented in the Company's reply brief, we sought, on behalf of the stockholder plaintiffs/interveners, permission to file a sur-reply in further opposition to the motion, which permission was granted by the Court. The sur-reply brought to the attention of the Court the seminal decision issued in *Business Roundtable v. SEC,* 905 F.2d 406 (D.C. Cir. 1990), certain law review articles and a presentation by former Supreme Court Justice Veasey, which, in our view, provided an additional basis for denying the Company's motion and finding that the rules of the NYSE MKT could not override the voting requirement stated in the Company's bylaw at the time of the February 2013 Vote.

38. The Company sought permission to serve, and thereafter filed with the Court, a response to the sur-reply on August 19, 2014.

39. The Court had set oral argument on the motion for August 26, 2014. Prior to the argument, the parties undertook certain discussions pursuant to Rule of

Evidence 408 to determine whether the parties could agree on a resolution of the actions. However, no agreement was reached prior to the August 26 hearing.

40. On August 26, 2014, the parties presented argument to the Court on the motion. During the course of the hearing, counsel for the Company and counsel for the stockholder plaintiffs/interveners presented their arguments, respectively, in favor of and against the motion, and responded to the Court's questions and observations. Although the Court took the matter under advisement at the conclusion of the hearing, the Court's questions and observations provided the parties with a better understanding of the Court's views on the arguments made in favor and against the motion as well as other aspects of the cases filed by the shareholder plaintiffs and the Application filed by the Company.

Negotiations of a Potential Resolution of the Actions

41. Following the Court hearing on August 26, 2014, the parties undertook further discussions concerning a potential resolution of the actions. In preparation for the discussions, Co-Lead Counsel undertook further analyses of the Company's proxy statements and other public information about the Company and its compensation plans. Because of the nature of the consolidated stockholder action and the Application, the discussions centered on various potential elements that might be part of an overall resolution of the cases.

42. Ultimately, after extensive discussions between counsel for the stockholder plaintiffs and counsel for defendants (as well as numerous internal discussions and client communications), the stockholder plaintiffs presented a best and final settlement demand which, after further discussions, the Company accepted on its behalf and on behalf of the other defendants in the Actions.

43. The parties thereafter entered into a Memorandum of Understanding (MOU) on October 7, 2014. The MOU laid out the substantive Settlement terms eventually included in the Stipulation, as well as certain provisions relating to discovery to which plaintiffs would be entitled before making a final determination as to the Settlement.

Confirmatory Discovery and the Formal Stipulation of Settlement

44. In addition to the substantive terms of the MOU, it also reflected the parties' agreement that the Company would provide certain discovery, which included:

> The Company would produce: (a) charts showing stock awards (included vesting schedules) and summary compensation for all Section 16 officers (like the charts included in the last two proxy statements for the six top executives), and (b) information about the number of other employees who received stock grants from the February 2013 vote the total amount of those awards, and vesting schedules.
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> The Company would further produce other discovery, in the form of documents and depositions of two persons, prior to consummation of a settlement. Specific topics of the discovery would include: (a) 2011 Plan voting requirements, (b) the February 2013 vote and proxy, (c)

> the April 2014 bylaw change, (d) the April 2014 proposals to add another 30 million shares to the 2011 Plan share reserve and new criteria for awards in the 2014 – 2018 time period, and (e) the accounting for the 2013 stock awards.

Plaintiffs retained the right to withdraw from the settlement if they believed, in good faith based on the discovery, that they could no longer support the settlement.

45. The parties reached agreement on a confidentiality agreement on October 13, 2014, with regard to the documents and other information to be produced by the Company pursuant to the MOU. Later that same day, the Company provided plaintiffs' counsel with documents reflecting the first set of the promised discovery.

46. The Company thereafter provided documents pertaining to the topics covered by the MOU, including documents that plaintiffs' counsel specifically requested upon review of the Company's initial productions. In all, the Company produced over 7,500 pages of documents, which plaintiffs' counsel reviewed, analyzed, and worked with in preparation of the discovery depositions provided in the MOU.

47. Plaintiffs' counsel thereafter deposed David B. Kilpatrick, a director of the Company and chairman of the board's compensation committee, and Greg W. Rayford, Senior Vice President and General Counsel.

48. After full consideration of the discovery provided since the signing of the MOU, the shareholder plaintiffs and their counsel believe that the discovery

supports the settlement reached in this case. Copies of Plaintiffs' affidavits supporting the Settlement are attached hereto as Exhibits 2a-2d. Accordingly, the parties went forward with finalizing the Stipulation and Agreement of Compromise, Settlement and Release (together with the exhibits hereto, the "Stipulation"), which was executed and submitted to the Court on December 12, 2014.

The Settlement Provides Significant Benefits to Cheniere's Public Shareholders, as well as the Company, and Should be Approved

49. The Settlement provides that in consideration for the full settlement and release of all Released Plaintiffs' Claims against the Released Defendant Persons (as defined in the Stipulation) and the dismissal with prejudice of the Actions:

A. The Parties will jointly request that the Court validate, pursuant to 8 *Del. C.* § 205, all Existing Awards (whether vested or unvested, provided however that all unvested shares shall remain subject to the terms of the award agreements) and all common stock issued or to be issued in connection with the Existing Awards, and further declare that current holders of the Existing Awards are entitled to ownership of such shares (subject to the terms and conditions of the award agreements, including any outstanding requirements for vesting) (the "Validation").[4]

[4] "Existing Awards" include the approximately 17,154,370 shares (subject to equitable adjustment in according with the terms of the 2011 Plan) that were awarded following the February 2013 Vote from the shares included in Amendment No. 1 to the 2011 Plan, which awards either had vested or were outstanding subject to vesting conditions. "Available Shares" consist of approximately 7,845,630 shares (subject to equitable adjustment in accordance with the terms of the 2011 Plan) of the 25 million shares listed with the NYSE

B. Except with respect to the stockholder vote concerning the Available Shares set forth in paragraph F below (paragraph 1.F. of the Stipulation), Cheniere will not seek stockholder approval for stock-based compensation beyond that which was the subject of Amendment No. 1 prior to January 1, 2017.

C. Except as permitted by paragraph F (paragraph 1.F. of the Stipulation) below (and subject to the following sentence), prior to January 1, 2017, Cheniere will not award stock-based compensation to Company executives, directors or consultants other than to the extent stockholders have already approved such compensation or such compensation was subject to the Validation. Notwithstanding the foregoing, authorized stock (unissued or treasury), other than the Available Shares, may be used to compensate new employees (inclusive of individuals who had a bona fide period of non-employment with the Company) without violating the preceding sentence; and a cash pay award (bonus, incentive, etc.) tied to the performance of the Company's stock shall not constitute stock-based compensation.

D. All compensation-related matters submitted by Cheniere to a stockholder vote on or before September 17, 2022 will be subject to a "majority of the shares present and entitled to vote" standard. For the avoidance of any doubt, pursuant to this standard, abstentions will be counted as the functional equivalent of "no" votes and broker non-votes will not be considered in determining the outcome of the resolution, but will be counted for purposes of establishing a quorum. Nothing set forth herein shall be interpreted as imposing an obligation on the Company to submit any matter to a stockholder vote.

E. The Compensation Committee of the Cheniere Board of Directors will be comprised exclusively of independent directors defined in accordance with the rules of the NYSE MKT (or the rules of the primary exchange on which the Company common stock is listed in the future).

MKT LLC and registered with the SEC subject to Amendment No. 1 that either had not been awarded or had again become available for grant following the forfeiture or lapse of awards.

F. With respect to the Available Shares, the Parties will jointly request that the Court enter an order, pursuant to 8 *Del. C.* § 205, as follows (the "Available Share Order" and together with the Validation, the "Section 205 Orders"):

1. No earlier than 90 days after the Court's entry of the Judgment, the Company may hold a stockholder vote to approve or not approve the issuance of awards with respect to the Available Shares. Any such vote will be subject to a "majority of the shares present and entitled to vote" standard. For the avoidance of any doubt, pursuant to this standard, abstentions will be counted as the functional equivalent of "no" votes and broker non-votes will not be considered in determining the outcome of the resolution, but will be counted for purposes of establishing a quorum.

2. The Company will not award any of the Available Shares pending a stockholder vote pursuant to this paragraph F (including its subparts) (which, until such approving vote and permitted use thereafter or termination of the 2011 Incentive Plan, shall be evidenced by an electronic reserve of approximately 7,845,630 shares solely for use pursuant to Amendment No. 1). If the shareholders do not approve the issuance of the awards with respect to the Available Shares, those shares shall be authorized but unissued shares and shall not be awarded under Amendment No. 1 or used for any other compensation purpose whatsoever.

3. If the Cheniere stockholders approve the issuance of the awards with respect to the Available Shares pursuant to this paragraph F (including its subparts), the Available Shares shall be valid for compensation use and may be awarded pursuant to the terms of the 2011 Plan; provided, however, that no more than 1 million of the Available Shares (subject to equitable adjustment) may be awarded to Mr. Charif Souki.

50. Plaintiffs and plaintiffs' counsel thoroughly considered the facts and law underlying the claims asserted in the Consolidated Stockholder Action.

Although plaintiffs and plaintiffs' counsel believe that the claims asserted have merit, the Court could have found, among other things, that (a) the stockholder vote taken on February 1, 2013 had approved the proposal made in Amendment No. 1 to increase the number of shares in the 2011 Plan share reserve by 25 million shares, (b) there were no misrepresentations in the December 31, 2012 proxy statement or in subsequent proxy statements concerning the voting standard for or the result of the vote taken on February 1, 2013, and/or (c) even if the Court had concluded that abstentions should have been counted as "no" votes in connection with the February 1, 2013 vote, equitable factors supported a declaration under 8 *Del. C.* § 205 that any stock issued or to be issued pursuant to Amendment No. 1 was valid, and could have entered judgment for the Defendants dismissing Plaintiffs' claims. Plaintiffs and plaintiffs' counsel also considered (a) the expense and length of continued proceedings necessary to pursue the claims asserted through trial, as well as the uncertainty of appeals, (b) the fact that the relief provided for in the Settlement may not have been able to be achieved through judicial resolution, and (c) the certainty provided by the Settlement, rather than keeping the Company and its stockholders with the uncertainties raised by the plaintiffs' complaints with respect to the Company's prior stock grants and the Proxy issued in April 2014.

51. As a result of the Settlement achieved herein, plaintiffs and plaintiffs' counsel have obtained defendants' agreement: (i) to make certain restrictions on the use for compensation purposes of the approximately 7.845 million Available Shares absent a new stockholder vote, which would be held under a voting standard of a majority of the shares present and entitled to vote; (ii) to make certain restrictions on the amount of stock Cheniere's CEO could receive of the Available Shares in the event of stockholder approval; (iii) to modify the voting standard for all compensation-related votes over approximately the next seven and a half years; (iv) to defer seeking stockholder approval for any more stock-based compensation until 2017, irrespective of the outcome of the vote on the 7.845 million Available Shares; and (v) that the Compensation Committee of the Company will be comprised exclusively of independent directors.

52. Plaintiffs and plaintiffs' counsel have sought to value the benefits provided by the Settlement to the Company and its stockholders in three ways.

53. First, Co-Lead Counsel retained Gregory P. Taxin, a co-founder of the Glass-Lewis proxy advisory firm and a principal of a series of other money management, investment and consulting firms. Mr. Taxin was asked to value the provision in the Settlement requiring the Company to undertake a re-vote, based on a majority of the shares present and entitled to vote standard, of the 7.845 million Available Shares in order to utilize those shares for any compensation purpose. A

copy of Mr. Taxin's report, which includes as an exhibit his curriculum vitae, is attached hereto as Exhibit 3. As demonstrated in Mr. Taxin's report, the value of this provision of the Settlement is $565 million. *See* Report of Gregory P. Taxin, at 8-11.[5]

54. Second, Co-Lead Counsel retained Steven C. Root, a partner at compensation consultant Steven Hall & Partners. Mr. Root was asked to value the provision in the Settlement that prohibits the Company from seeking stockholder approval for any stock-based compensation awards until January 1, 2017. Mr. Root's report, which includes as an exhibit his curriculum vitae, is attached hereto as Exhibit 4. Mr. Root utilized two methodologies to value this provision of the Settlement, a burn rate analysis and a Monte Carlo simulation, for the years 2014 through 2016. As demonstrated in Mr. Root's report, the savings during this period, based on a Monte Carlo simulation, are $1.158 billion, and based on the burn rate analysis are between $1.263 billion and $1.752 billion. *See* Report of Steven C. Root, Exhibit 2, ¶¶ 10 *et seq*.

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[5] As explained in Mr. Taxin's report, the approximately 7.845 million Available Shares have effectively been placed under the control of Cheniere stockholders to determine whether to allow Cheniere's board to distribute those shares as compensation to Company insiders and thereby dilute the shareholders' financial interest in the Company by another 3.3%. *Id.* Further, in light of the analyses he conducted and his professional experience, Mr. Taxin believes it is highly unlikely that Cheniere stockholders will vote to authorize the board to use the shares for compensation purposes. *Id.*

55. Third, other provisions of the Settlement also provide benefits to the Company and its stockholders, although plaintiffs have not sought to quantify the value of these benefits, The other provisions of the Settlement require the Company to: (a) utilize a majority of the shares present and entitled to vote standard for all compensation-related matters submitted by Cheniere to a stockholder vote until September 17, 2022, under which abstentions will be counted as the functional equivalent of "no" votes; (b) have the board's compensation committee comprised exclusively of independent directors; and (c) award not more than 1 million shares to the Company's CEO, Charif Souki, in the event Cheniere stockholders vote in favor of the Company's proposal to allow the approximately 7.845 million Available Shares to be utilized for compensation purposes. Some of these benefits are also discussed in the Taxin Report, at 12. Plaintiffs and their counsel further believe that there were significant benefits provided not only to Cheniere and its stockholders from the research, commencement and prosecution of this stockholder action, but also to stockholders of Delaware corporations generally, because actions such as this reinforce the necessity that Delaware corporations, their boards and management comply strictly with a company's certificate of incorporation, bylaws and other governing documents.

56. In light of the valuable benefits that plaintiffs and plaintiffs' counsel believe are provided to the Class, Cheniere and its stockholders under the Settlement, and on the basis of information available to them, including but not limited to publicly available information and the additional discovery described above, plaintiffs and plaintiffs' counsel have determined that the proposed Settlement is fair, reasonable and adequate to the Class, Cheniere and its stockholders. Plaintiffs and plaintiffs' counsel further believe that the Settlement provides substantial immediate benefits to the Class, Cheniere and its stockholders without the risk that the plaintiffs might have achieved little or no effective relief after continued, extensive and expensive litigation, including trial and the appeals that were likely to follow.

57. As such, plaintiffs and plaintiff's counsel believe that the Settlement should be approved.

The Fee and Expense Application Is Supported by the Benefits Provided by the Settlement, and Should Be Approved in its Entirety

58. The parties agreed that after execution of the MOU, they would undertake discussions about a potential fee that counsel for the stockholder plaintiffs might seek in this Action. The MOU further provided that while defendants acknowledged that plaintiffs' counsel would be entitled to a fee based on their actions on behalf of the putative Class and derivatively on behalf of Cheniere, defendants reserved their right to object to the amount of any fee that

plaintiffs' counsel might seek, absent a prior agreement between the parties on the amount of such a fee request.

59. In fact, no such discussions about the amount of a fee that plaintiffs' counsel might seek took place until after all the substantive terms of the Stipulation had been negotiated and finalized.

60. And notwithstanding those discussions, the parties have not reached any agreement with respect to the fee request being made by the plaintiffs' counsel.

61. Through paragraph 47 of the Notice, putative class members and holders of Cheniere stock were informed that

> Plaintiffs' Lead Counsel will apply to the Court for a collective award of attorneys' fees and expenses to Plaintiffs' Lead Counsel and all other legal counsel who, at the direction and under the supervision of Plaintiffs' Lead Counsel, performed services on behalf of the Class and/or performed services derivatively on behalf of nominal defendant Cheniere in the Actions (collectively, "Plaintiffs' Counsel"). Plaintiffs' Lead Counsel's fee and expense application will not exceed 15% of the aggregate value of the Settlement as determined by Plaintiffs' experts in reports that Plaintiffs will be submitting to the Court in support of the Settlement and in support of Plaintiffs' Lead Counsel's fee and expense application. The filings will be made to the Court and will also be posted on the websites of Plaintiffs' Lead Counsel, as identified in paragraph 51 below, on or before February 10, 2015. Defendants agree to the entitlement of Plaintiffs' Lead Counsel to a fee, but Defendants reserve the right to contest the value of the Settlement and to oppose the amount of the award sought by Plaintiffs' Lead Counsel's application to the Court. Any attorneys' fees and expenses awarded by the Court to any Plaintiffs' Counsel shall be paid by the Company, its successors in interest, and/or its insurers.

62. Based on the benefits that have been provided by the Settlement as determined by Plaintiffs' experts, plaintiffs' counsel might have applied for a fee and expense award in excess of $250 million (15% of the $565 million and $1.159 billion in benefits found by plaintiffs' experts). However, taking into account other *Sugarland* factors and out of concern for the Company, plaintiffs' counsel have determined to seek a fee and expense award of $43.1 million.

63. The benefits provided for the Settlement have been valued by plaintiffs' experts as follows: $565 million stemming from the provision in the Settlement allowing the Company to undertake a re-vote, based on a majority of the shares present and entitled to vote standard, of the 7.845 million Available Shares in order to utilize those shares for any compensation purpose (*see* Report of Gregory P. Taxin, Exhibit 3); and at least $1.159 billion stemming from the provision in the Settlement that prohibits the Company from seeking stockholder approval for any stock-based compensation awards until January 1, 2017 (*see* Report of Steven C. Root, Exhibit 4); and other non-quantifiable benefits identified above.

64. Over the course of the litigation, plaintiffs' counsel spent over 3,000 hours on the development, commencement, prosecution and settlement of these Actions. A chart setting forth in summary form the time, lodestar and expenses incurred by each of the Plaintiffs' Counsel through February 5, 2015, in the

prosecution of this case is attached hereto as Exhibit 5. Declarations from attorneys with the five firms representing plaintiffs, with their individual time, lodestar and expense information, from which the information in the chart is derived, are attached hereto as Exhibits 5a-5e.

65. While the effective hourly rate for the work performed compared to the fee and expense award being sought is higher than in other cases, if ever there was a case bearing out the Court's admonition "To prepare a good complaint requires the investment of time and resources" (*In re Del Monte Foods Company Shareholders Litigation,* C.A. No. 6027-VCL, 2010 WL 5550677, at *9 (Del. Ch. Dec. 31, 2010)), this case is it. As noted above, had plaintiffs' counsel not investigated, researched, crafted and filed the *Jones* complaint and brief in support of plaintiff's motion to expedite proceedings, none of the alleged misconduct – including the granting of stock awards without, in our view, appropriate shareholder approval – would have come to light. And, based on the Company's own Form 8-K filing on June 2, 2014, had we not filed the *Jones* case and moved immediately for expedited proceedings, the Company would not have postponed its annual stockholder meeting from June 12, 2014 to September 11, 2014, and would have sought at that meeting – under the revised bylaw approved by the board in early April 2014 that set as the voting requirement a majority of votes cast standard under which abstentions would not have been counted within the vote

totals – stockholder approval for a 30 million additional shares being placed into the share reserve for the 2011 Plan and for the newly proposed 2014-2018 LTIP.

66. All of that was stopped by this litigation. Indeed, not only did plaintiffs' actions stop the June 12, 2014 meeting from taking place, and thereby stop the vote on the 30 million share proposal from being put to Cheniere stockholders at that time, but it was also within the context of this litigation that the Company informed the Court on June 23, 2014 – a month before it filed a Definitive Proxy Statement with the SEC on July 25, 2014 – that the Company was withdrawing the proposals relating to the 30 million additional shares and the 2014-2018 LTIP from the Annual Meeting of Stockholders.

67. And finally, through the Settlement, plaintiffs' counsel negotiated the stringent provisions that have produced over $1.7 billion of quantifiable benefits as well as other significant unquantifiable benefits to the Company and its stockholders.

68. In light of the foregoing, as well as further arguments being submitted in plaintiffs' brief in support of the settlement and fee and expense application, plaintiffs' counsel respectfully submit that the requested fee and expense award is fair and reasonable based on the benefits provided by the Settlement and the work performed by plaintiffs' counsel.

I declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge.

Date: February 10, 2015

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