No. 24-750

IN THE

Supreme Court of the United States

MARTHA ADAMS, *et al.*,

Petitioners,

v.

ANGELO RESCIGNO, SR., *et al.*,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Where a district court determines that every member in a class settlement suffered a concrete injury, can the district court approve a class settlement consistent with Article III?

2. Does a district court satisfy Federal Rule of Civil Procedure 23(e)(2)'s requirements when it expressly considers each factor in Rule 23(e)(2) and determines that the class settlement is fair?

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INTRODUCTION

Petitioners ("Objectors") seek to reverse the Third Circuit's unreported, non-precedential opinion affirming the district court's approval of a settlement of state law claims in the amount of $7 million (the "Settlement") seven years ago. Certain of the Objectors (the "Marbaker Objectors"), whom the remainder later joined and who were represented by Objectors' current counsel, had previously brought a class arbitration (the "Marbaker Arbitration"), asserting claims and arguments "almost identical"[1] to those they now attack here. Then, after the effective denial of class certification in that case was affirmed by the Third Circuit, they voluntarily abandoned their action in order to object to the Settlement. Having previously urged the Third Circuit to certify a virtually identical class in the Marbaker Arbitration, they now contend that that same court erred when it did so in this action.

Objectors' petition (the "Petition") raises no legal issues, let alone compelling or important issues, warranting the grant of certiorari. Nor does it come close to demonstrating that the Third Circuit's opinion conflicts with this Court's precedent or with the law of any circuit. Their Petition demonstrates, and is based upon, nothing more than their dissatisfaction with findings of fact by the district court, affirmed by the Third Circuit, which, they assert, are unsupported by the evidence. The starting point for each and every one of Objectors' legal arguments is that the district court was clearly erroneous as to the facts, and it is upon these purported factual errors that Objectors

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[1] *Marbaker v. Statoil USA Onshore Props. Inc.,* 2018 WL 4354522, at *2 (M.D. Pa. Sept. 12, 2018), *aff'd* 801 F. App'x 56 (3d Cir. 2020).

manufacture purported issues of law. Objectors repeatedly mischaracterize the lower court's findings in order to manufacture a salient legal issue.

Thus, Objectors' threshold argument is that the district court lacked Article III jurisdiction, in contravention of this Court's decision in *TransUnion v. Ramirez*, 594 U.S. 413 (2021), an argument premised upon a mischaracterization of both the district court's findings and the Third Circuit's holding.[2] The Third Circuit held that the district court correctly found that all members of the class suffered concrete harm and "stated"[3] (not held) in dictum, that "[m]oreover," the "'standing inquiry focuses solely on the class representative(s).'" Pet. App. 8a-9a. The district court previously found, after a meticulous review of the Settlement agreement, that the class included only class members who had suffered injury. Pet. App. 20a-22a. Its decision barely implicates, let alone conflicts with *TransUnion.* The issue now posed by Objectors, based entirely upon the Third Circuit's dictum, was not even raised in the district court, but was first raised on appeal. In fact, Objectors argued that the Third Circuit should not address the issue, precisely because it had not been properly raised in the court below and was thereby waived. Reply Brief of Appellants at 3, *Rescigno v. Statoil USA Onshore Props.*, No. 20-2431 (Oct. 13, 2023). For this Court to even consider whether there was an error of law—much less one worthy of review—it would have to determine that the district court's finding of fact (upheld by the Third Circuit) was clearly erroneous,

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[2] All citations and footnotes are omitted and emphasis is added unless otherwise stated.

[3] Pet. 33.

and that the class did, in fact, include uninjured class members.

In this regard, Objectors demonstrate no factual error. They provide no evidence that any uninjured class member exists, or even identify who he might be, instead faulting the district court solely because it did not eliminate the possibility that such class members might exist. The Third Circuit noted that "Objectors fail to identify a single member of the settlement class that has yet to be injured." Pet. App. 8a. They exist, as the district court wrote, only "in the hypothetical realm." Pet. App. 22a. Objectors' factual arguments are as "hypothetical" as their legal arguments.

Objectors' second argument suffers from the same flaw. It argues that the class was improperly certified because of differences in class members' leases that predominated over common issues and created purported conflicts within the class. However, as the Third Circuit pointed out, the district court "reviewed extensive documentation, including a detailed report that made reasonably clear that any difference in the leases was immaterial." Pet. App. 11a. As before, the necessary predicate for a determination that any difference in lease language precluded class certification requires a holding that there were material differences, and that the lower courts' findings of fact to the contrary were clearly erroneous.

As before, Objectors demonstrate no such predicate. As before, they failed to provide a single example of a materially different lease, instead faulting, again, the rigor of the district court's analysis that no materially different lease term existed. In fact, throughout the Marbaker Arbitration, as discussed more fully below, the Marbaker Objectors acknowledged that class members' leases were, indeed standard and uniform.

When seeking to certify their arbitration class,[4] they argued to the Third Circuit, the same court whose decision they now seek reverse, that class members were "similarly situated lessors." Brief for Appellant and Volume I of Appendix (A1-A28) at 7, *Marbaker v. Statoil Onshore Props. Inc.*, 2019 WL 182759, at *7 (U.S. Jan. 11, 2019). Objectors' own pleadings demonstrate that the courts below were correct.

Finally, Objectors argue that certiorari should be granted because the Third Circuit substituted a purported policy preference in favor of settlement by affirming the district court's grant of preliminary approval based on what it claims was a presumption of fairness of the Settlement solely because it was negotiated at arms' length. Objectors again mischaracterize the record in an attempt to manufacture a circuit split. Neither the Third Circuit nor the district court, as Objectors contend, applied a presumption that the Settlement was fair based on that single factor.[5] As the Third Circuit held, the district court "exercised its discretion soundly" when it approved the class settlement based on a review of all relevant factors. Pet. App. 14a-15a. Objectors' contrived legal issue is calculated to disguise the absence of any meaningful challenge to the district court's determination that the Settlement was fair, particularly given the presence of arbitration in class members' leases, which likely would have precluded them from recovering anything at trial.

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[4] *Marbaker v. Statoil USA Onshore Props., Inc.,* 801 F. App'x. 56 (3d Cir. 2020).

[5] Moreover, the district court applied only an "initial presumption." Pet. App. 110a.

By arguing that Objectors' legal arguments are hypothetical and based upon a factual predicate at odds with the lower courts' decisions, Plaintiff does not mean to suggest that such arguments have merit. To the contrary, they are meritless. Nevertheless, there is no reason for this Court to delay further the resolution of the Settlement, which has now reached seven years, to take up issues, the resolution of which, standing alone, would not disturb the decisions below. Accordingly, the Petition should be denied.

COUNTERSTATEMENT OF FACTS

Plaintiff, executor of the estate of original plaintiff Cheryl B. Canfield, and other members of the class are parties to what is termed a "proceeds" lease. Equinor became a counterparty to those leases when it acquired, in 2008, a minority interest from Chesapeake Appalachia, L.L.C. ("Chesapeake"). ECF No. 1, ¶ 15. Plaintiff's lease requires Equinor to pay, as a royalty, "15% of the amount realized" from the sale of his gas. ECF No. 1, ¶ 18. Other class members' leases, although phrased differently, calculate the royalty in the same manner. For example, other leases require Statoil to pay a percentage: (1) of "revenue realized," or (2) of "sales proceeds actually received." ECF No. 1, ¶¶ 19-21. Although other terms of the gas leases, unrelated to the proceeds calculation, may differ, and although the precise language with respect to royalties to be paid contained in each lease may differ in immaterial respects, as to the calculation of royalties, each and every lease requires Statoil, to pay each class member a percentage of revenue realized or proceeds received from the sale of his gas. ECF No. 1, ¶ 22.

From these proceeds or revenues, Statoil deducts costs depending upon the terms of the individual lease.

Some leases, such as Plaintiff's so-called "at the well lease," allow Statoil to deduct from the royalty certain costs incurred from the moment that gas is produced from the well. Other leases allow Statoil to deduct only costs incurred further downstream. In addition, regardless of when incurred, leases differ as to what costs may be deducted. *See generally*, *Kilmer v. Elexco Land Servs.*, 605 Pa. 413, 424, 990 A.2d 1147 (2010).

As reflected in the table of lease forms set forth in the Expert Report of Ammonite Resources Company, dated September 24, 2020 (the "Ammonite Report"), submitted by Plaintiff in support of the Settlement, every lease in this action was a "proceeds" lease. JA1013. The only differences among the leases involved what costs could be deducted from those proceeds.

Plaintiff's Complaint did not challenge the manner in which Equinor calculated its deductions; indeed, claims challenging such deductions were expressly excluded from the Settlement and were not released. Pet. App. 260a. Instead, Plaintiff challenged only how Equinor calculated the "proceeds."

When calculating the royalty owed to all class members, Equinor employed one subsidiary to extract the gas from the well, and then simultaneously sold it to another subsidiary at an index price, reflecting general prices of gas sold at the well (the "Index Price Method"). The latter subsidiary thereafter sold the gas downstream to third parties, at a higher price. Plaintiff alleged that the intracorporate transfer by Equinor was not a bona fide sale, and that Equinor was required to calculate the royalty based upon the "proceeds" realized from the sale of gas to independent third parties, as did Chesapeake (the "Market Price Method") for the same gas. The Complaint alleged

that Plaintiff and class members were entitled to the difference between the Index Price and the Market Price, and it specified that difference. ECF No. 1, ¶¶ 25-29.

From the time Equinor first acquired its lease interests until about 2013, the Index Price it paid tracked relatively closely the Market Price paid by Chesapeake. In 2013, however, Equinor changed the index price it was utilizing and because of an anomalous bottleneck in a relevant pipeline, the prices diverged for a period, damaging each and every class member. *See, e.g.*, JA1001.

THE PROCEEDINGS BELOW

Plaintiff Canfield filed her Complaint on January 15, 2016. The Complaint alleged two principal claims for relief. The first was that Equinor's use of the Index Price Method violated two express contractual terms of Plaintiff's lease. The second was that Equinor's use of the Index Price Method violated an implied duty to market. ECF No. 1, ¶¶ 35-43, 44-47.

Defendants moved to dismiss the Complaint on the grounds of personal jurisdiction on behalf of Equinor's Norwegian parent, and for failure to state a claim for relief on behalf of all defendants.

On March 22, 2017, the district court ruled on defendants' motion, dismissing Plaintiff's claim alleging an express violation of contract, as well as the claims subsidiary thereto, but declining to dismiss the claim alleging an implied breach. Pet. App. 204a. Although Objectors characterize the latter claim as a "leftover" one,[6] the scope of discovery to which Plaintiff

[6] Pet. 25-26.

was entitled remained essentially unaffected, the evidence he could introduce at trial remained essentially unimpaired, and the damages he could recover remained essentially undiminished.

Plaintiff engaged in extensive discovery, beginning while the motion to dismiss was pending. Plaintiff's counsel reviewed documents that included the principal information relevant to the elements of her claim: (1) information setting forth the lease language between Equinor and class members, including that of the L-29 leases; (2) information setting forth the proceeds actually paid to class members utilizing the index prices; and (3) information setting forth the actual proceeds received by Equinor from third parties. JA0734. Thereafter, Plaintiff retained an expert in the oil and gas industry to review the data underlying all the above calculations. This data set forth, in granular detail, the difference between the index price utilized by Equinor, the price it actually received from the resale of gas, and the costs associated therewith. JA0734.

After months of review, in October 2017, counsel reached an agreement in principle with Equinor to settle the case. Counsel advised the court of the settlement discussions in December 2017, and executed a formal agreement on March 26, 2018. JA0738.

The Marbaker Arbitration

As noted above, while Plaintiff pursued this litigation, the Marbaker Objectors were pursuing a parallel litigation. The Marbaker Objectors elected to commence a class arbitration in April 2015 (JA0883-84), on behalf of a class which suffered from the same

purported flaws they now attribute to the Settlement class:[7]

> "[A]ll other lessors who entered into a lease in the Marcellus Region in which Statoil has acquired an interest that, by its terms, requires royalties to be calculated based on 'revenue realized' or 'gross proceeds' and who, within the past six years, have received royalty payments from Respondent."

Marbaker, 2018 WL 4354522, at *1.

In sharp contrast to their current assertions in the Petition, they argued that certification of this class was appropriate because class members' leases were "materially identical." Plaintiffs' Memorandum of Law in Opposition to Defendant's Motion to Stay Proceedings at 2, *Marbaker v. Statoil USA Onshore Props., Inc.*, No. 17-cv-01528 (Oct. 18, 2017) ECF No. 13. In their arbitration complaint, they alleged *inter alia*, through their current counsel:

> The leases in which [Equinor] acquired an interest, including Claimants' leases, are form documents that contain uniform provisions relating to the calculation of royalties that apply to all lessors who are parties to leases with identical terms.

ECF No. 109-1, ¶ 27.

Also, in their arbitration complaint, the Marbaker Objectors, through their current counsel, alleged that the district court had subject matter jurisdiction, because each class member had been injured as a result of defendants' breach of contract, and was

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[7] Pet. 5, 32.

threatened with future harm by defendants' continuing conduct. Specifically, the complaint alleged: (1) "Claimants and class members have been damaged as a result of [Equinor's] breach of the lease agreements"; and (2) "Unless [Equinor] is ordered to desist from its practice of artificially depressing the sale price of the gas of Claimants and the class members, it will continue to cause harm to Claimants and class members." *Id.*, ¶¶ 72, 82. Objectors only reversed their view on the certifiability of the class when the Third Circuit determined that class members' arbitration provisions did not authorize a class arbitration, effectively terminating their litigation. *Marbaker*, 801 F. App'x at 60-61.

In June 2015, the parties agreed to mediate their dispute, entering a mediation protocol in June 2015. JA0440. Over the next two years, the Marbaker Objectors participated in two mediation sessions, or one per year, the first in October 2015, the second, in August 2016. *Id.* Despite the absence of adversary litigation, Objectors claim to have devoted over 2,000 hours to their litigation. ECF No. 111, at 3.

The Marbaker Objectors did not actively pursue their litigation until August 2017, after they discovered the existence of settlement negotiations in this case, whereupon they filed a declaratory judgment action in the district court seeking a declaration that their arbitration could proceed as a class arbitration. *Marbaker*, 2018 WL 4354522, at *2. That action was stayed, pending resolution of the appeal before the Third Circuit in *Chesapeake Appalachia L.L.C. v. Scout Petroleum, LLC*, 727 F. App'x 749 (3d Cir. 2018). *Marbaker*, 2018 WL 4354522, at*2. After the decision in *Scout*, the district court in *Marbaker* determined that the arbitration could not proceed as a class

arbitration and dismissed the case. That decision was affirmed. *Marbaker*, 801 F. App'x at 60-61. Thereafter, the Marbaker Objectors voluntarily discontinued their appraisal proceeding, allowing it to lapse.

The Settlement Terms

The Settlement provides for an all-cash payment of $7 million to settle all claims relating to Equinor's past use of the Index Pricing Method to calculate Royalties in the Northern Pennsylvania area. Pet. App. 258a. The Settlement treated class members who have arbitration provisions equally with class members, such as Plaintiff, who did not. Pet. App. 280a. The Class granted a release that allowed Equinor to continue using the Index Pricing Methodology to calculate Royalties for a period of five years from the Effective Date of the Settlement for certain Royalty Owners (the "Sunset Period"). Pet. App. 258a, 259a-260a. The Sunset Period would have expired but for the seven-year delay caused by Objectors' objections.

The Settlement provided better terms for a minority of class members—those in the Lease Form 29 Group, who comprise approximately 7% of the class volume. First, it allocated to them a distribution twice that allocated to other class members, including Plaintiff, despite the arbitration provision in their leases. Pet. App. 39a. In addition, Equinor agreed to forgo the Sunset Period with respect to them, basing their royalty on the Resale Price. Pet App. 259a-260a.[8]

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[8] Contrary to Objectors' assertion, the Settlement did not change in any way the calculation of L-29 leaseholders' royalty. The L-29 lease form entitles leaseholders to the "Gross Proceeds" from downstream sales (JA0167, ¶ 4(a)) *minus* "reasonable, actual costs paid to nonaffiliated parties for gathering, com-

The Settlement expressly excluded from the release any claim related to post-production costs, which were not a part of this case. Pet. App. 71a, 260a.

The Settlement Approval Process

The filing of the Settlement agreement on March 27, 2018, set off a flurry of activity by the Marbaker Objectors, in sharp contrast to their prior inactivity. The Petition gives an abridged account of Objectors' efforts to delay approval of the Settlement, efforts which have spanned seven years. All in all, Objectors filed ten motions or similar filings, which ranged from the meritless to what the trial court termed the "unserious" and "farcical." Pet. App. 80a. All but one were directed, like the Petition, not to the substance of the Settlement, but to some perceived flaw in virtually every step of the approval process.

These filings give a glimpse of how "unserious" Objectors' opposition to the Settlement has been. The first, mentioned in passing by the Petition (Pet. 10 n.5), sought to consolidate the instant action—one for breach of contract seeking damages—with the *Marbaker* action, which sought a declaratory judgment that the Marbaker Objectors could proceed with a class arbitration, despite the absence of even an arguable overlap between the two cases.

That motion was denied by the *Marbaker* court, not the district court, as Objectors misleadingly suggest.

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pression and transportation necessary to enhance the value of otherwise marketable gas." JA0168, ¶ 4(e). The new nomenclature, "Resale Price" has no substantive effect; the Resale Price is calculated as: the "Gross Proceeds," as previously defined in the lease, minus the deductions previously permitted by the lease. *Id.*, ¶ 4(e). It simply combines the two provisions into one, leaving L-29 leaseholders in the same position. Pet. App. 255a-256a.

Pet. 10. It characterized the motion as an improper attempt "to convert a run-of-the-mill consolidation motion into a substantive attack on a potential class settlement." *Marbaker v. Statoil USA Onshore Props., Inc.*, 2018 WL 2981341, at *3 n.4 (M.D. Pa. June 14, 2018). It further deemed their arguments "unconvincing and better suited for a motion to intervene."[9] *Id*.

Objectors disregarded the suggestion to move for intervention. Instead, they filed, as non-parties, a so-called objection to preliminary approval, which reiterated their attack on the Settlement. Only after the Third Circuit affirmed the denial of their motion to consolidate did the Marbaker Objectors seek to intervene, over two years later. The district court, noting the absence of any justification for the delay, denied the motion as untimely, calculated to delay proceedings, and because movants could adequately protect their interests as intervenors. Pet. App. 90a.

Thus, when the district court issued its order preliminarily approving the proposed Settlement, it did so after reviewing three adversary filings that "rel[ied] on many of the same arguments they have asserted since their first filing in this case," for which they provided "no evidence." Pet. App. 79a, 81a.

Objectors also complain that the district court "denied objecting class members access to any discovery." Pet. 10. This also misstates the record. Objectors' overbroad discovery "request" consisted of a letter from counsel, identifying no client, let alone a class member, that improperly sought documents related to the negotiation of the Settlement and copies of Plaintiff's yet-to-be-filed expert report. ECF No.

[9] The decision was affirmed. *Marbaker*, 801 F. App'x. at 62.

167-1. Objectors' counsel even moved to compel six days before the deadline he set.

Objectors never attempted to narrow their requests after Plaintiff and Equinor objected to them, although, given the hours they purportedly spent on the case, they were as well-placed as Plaintiff to identify what documents, if any, they needed. More significantly, they made no effort to resolve any dispute, as required by both Rule 37(a)(1) of the Federal Rules of Civil Procedure and Local Rule 26.3 of the Middle District of Pennsylvania Rules of Court ("Local Rules"), either before or after serving their "request." ECF No. 170, p. 2. By their own volition, they determined not to engage in discovery in accordance with the federal rules, preferring to manufacture another procedural "flaw."

Objectors' final complaint, that the district court struck their notice of supplemental authority, while unimportant, further illustrates how Objectors distort the record. The notice was stricken primarily because it contained extensive legal argument, expressly forbidden by Local Rule 7.36. Objectors elected not to correct their notice, but instead waited until after the court had approved the Settlement to challenge retroactively the district court's jurisdiction and present the full *TransUnion* opinion.

In a decision and order, the district court approved the Settlement on January 10, 2023. Pet. App. 29a-72a. It denied Objectors' motion for reconsideration on February 13, 2023 (Pet. App. 26a), and the Third Circuit affirmed both decisions on September 20, 2024 (Pet. App. 1a-15a).

REASONS FOR DENYING THE WRIT

To petition successfully for a writ of certiorari, a petitioner must not only demonstrate some conflict with respect to a federal question, but one with respect to an "important" federal question. Sup. Ct. R. 10. Objectors fail to meet this standard. Although, as noted, the Petition attempts to recast their appeal as one involving purely legal issues, their Opening Brief makes clear that their appeal is premised almost entirely upon factual findings claimed to be clearly erroneous.

Thus, Objectors' assertion that the class does not exclude members who were uninjured by Equinor's conduct is based entirely upon Objectors' disagreement with the district court's finding that it does. Far from being clearly erroneous, the finding was overwhelmingly supported by the record and affirmed by the Third Circuit. Thus, the decisions below barely implicated *TransUnion*, let alone conflicted with it.

Their argument that the district court improperly certified the class is similarly premised entirely upon the assertion that the district court's finding of fact, that the relevant provisions of each lease were similar, was wrong. Absent a showing that this finding is clearly erroneous, one Objectors fail to make, there is little, if any basis, to suggest any legal error is even implicated.

Finally, Objectors' assertion that the lower courts applied an improper "presumption" of fairness, apart from misstating the record, simply puts a patina upon their disagreement with the courts' factual findings that the Settlement was fair.

A. The Decision of the Court Below Neither Implicates Nor Conflicts with *TransUnion*

The threshold issue presented by the Petition is whether the district court, when certifying the class and approving the Settlement, had Article III subject matter jurisdiction over all class members. After a review of the record, amassed over several years of litigation, the district court determined that it did, as the class definition included only those who had been injured.

The district court's finding that the class definition did exclude uninjured persons, expressly affirmed by the Third Circuit, is fully supported by the record. In reaching that finding, the district court analyzed in great detail the relevant provisions of the Settlement agreement including not just the definition of the "Class," but that of "Royalty Owner," and "Royalty." The "Class" is defined as: "Royalty Owners in Northern Pennsylvania who have entered into oil and gas leases, regardless of the type of lease, that provide that the Royalty Owner is to be paid Royalties and to whom Statoil has (or had) an obligation to pay Royalties on production attributable to Statoil's working interest." Pet. App. 248a. The relevant definitions are: (1) "'Class,'" defined as "Royalty Owners," who have "who have entered into oil and gas leases" with Equinor" (Pet. App. 208a, ¶ 1.2.); (2) "'Royalty Owner[s],'" defined as any person[10] who currently "owns a Royalty interest in the Relevant Leases and is entitled to receive payment on such Royalty" (Pet. App. 256a, ¶ 1.34.); (3) "'Royalty,'" defined as "the amount owed to a lessor by [Equinor]." *Id.*, ¶ 1.33.

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[10] Including "predecessors, successors, agents, and other representatives." Pet. App. 21a.

As the Third Circuit correctly held: "The plain language of the class definition states that it applies to 'Royalty Owners ... who have entered into oil and gas leases ... that provide that the Royalty Owner is to be paid Royalties and to whom Statoil has (or had) an obligation to pay Royalties.'" Pet. App. 10a-11a (alterations in original).

The district court's finding of fact, affirmed by the Third Circuit, that every class member was injured, was fully supported by other evidence in the record. The Complaint in this case clearly identified and expressly quantified the injury that he and other class members suffered as a result of this underpayment—the difference, calculated the same way as to every class member, between the amount he should have been paid pursuant to the Sales Price Method, as reflected by what Chesapeake paid for the same gas, and the Index Price Method, the amount Equinor paid. ECF No. 1, ¶ 31. Further, the proceeds paid to each class member pursuant to the Settlement's plan of allocation, set forth in the Settlement agreement, were calculated on the basis of his economic loss. Equinor prepared a "'Distribution Schedule,'" which calculated the spread between the two methods as to each and every class member. Pet. App. 279a. Any compensation paid to any class member was directly correlated to the concrete damage he suffered as a result of Equinor's conduct. Thus, any suggestion that, as in *TransUnion*, a class member was paid a sum without a showing of injury, is baseless.

In sharp contrast to the parties in *TransUnion*, Objectors failed to identify a single class member who might have been uninjured by Equinor's conduct, let alone one who was compensated despite his lack of injury, or even a potential class of people. As the

district court noted, when denying Objectors' motion for reconsideration, "the objectors do not identify a single party in the settlement that would fall into this realm of a yet to be injured plaintiff. They remain purely in the hypothetical alone." Pet. App. 22a. The Third Circuit similarly ruled: "Objectors fail to identify a single member of the settlement class that has yet to be injured." Pet. App. 8a. Objectors fail to explain how, as a matter of simple arithmetic, any class member was uninjured if Equinor made a profit when it purchased his gas and resold it at a profit.

Bereft of any basis to disturb the findings of fact by the courts below, Objectors try to alchemize what is solely a dispute over the facts into a legal issue by asserting that it was the burden of the settling parties, and the district court "to prove" a negative—that such class members do not exist—and complain that the court, by requiring from Objectors even a glimmer of evidence, improperly shifted their purported burden onto Objectors and imposed a burden to "disprove standing." Pet. 34.

In making that argument, Objectors ignore the amendments to Rule 23 of the Federal Rules of Civil Procedure, upon which they rely heavily elsewhere in their Petition. In addition to the changes to Rule 23 which Objectors identify, other changes placed explicit burdens upon anyone objecting to a settlement as well. As the 11th Circuit stated in *Ponzio v. Pinon,* 87 F.4th 487, 499 (11th Cir. 2023): "Just as the proponents of a class action settlement bear the burden of developing a record demonstrating that the settlement is fair, reasonable, and adequate, … objectors to the settlement have some obligations of their own." Rule 23(e)(5)(A) requires that they "state with specificity"

the grounds for any objection, and upon whose behalf they are asserted.

Thus, in *1988 Trust for Allen Child. Dated 8/8/88 v. Banner Life Ins. Co.*, 28 F.4th 513, 520-21 (4th Cir. 2022), the Fourth Circuit, while acknowledging that the "district court must protect the class's interests from parties and counsel overeager to settle," also recognized that such court must also protect the class from "frivolous objectors (who may impede or delay valuable compensation to others)." With respect to objections, the court likened the Rule 23 standard to the notice pleading standard set forth in Rule 8. *Id.* at 521. The *Ponzio* court further explained that "when the objections are factual in nature, they cannot be conclusory." 87 F.4th at 500. Objectors' objections, based as they are, not on conclusory facts but upon conclusory hypotheses, do not satisfy even this minimal standard.

Objectors nevertheless try to conjure an issue of law from their naked factual assertions by mischaracterizing the decisions of the courts in two respects. First, they argue that the district court "reinterpreted" or "reimagin[ed]" the class definition "to mean that it only applies to 'current' lessors." Pet. 13-14. According to Objectors, the Settlement, and the district court's preliminary approval thereof, were not so limited; the Petition asserts that they defined the class to include *anyone* who ever "'entered into'" a lease with Equinor. Pet. 32. Objectors are flatly wrong. The class does not include "anyone" or "someone"[11] who entered into a lease; it includes "Royalty Owner[s],"[12] who did so. Pet. App. 256a, ¶ 1.34. Thus, it is Objectors, not

[11] Pet. 27.

[12] One who "owns a Royalty interest." Pet. App. 256a.

the courts below, who have reimagined the class definition.

Objectors' second attempt to fabricate a legal conflict is based upon the dictum, discussed above, in which the Third Circuit stated that "[m]oreover," under *TransUnion*, the "'standing inquiry focuses solely on the class representative(s).'" Pet. App. 8a-9a. As noted, the Third Circuit affirmed the district court's finding that every class member had demonstrated concrete injury. Its alternative hypothesis, based upon a set of facts which it had expressly rejected, does not present a "conflict" warranting a writ of certiorari. Even if this Court were to determine that the Third Circuit was in error, such "statement" had no impact on the decisions below.

B. The Decisions Below Neither Misapplied Nor Conflicted with *Amchem*, but Resolved Purely Factual Issues

Objectors contend that the district court's analysis, affirmed by the Third Circuit, was insufficiently "rigorous" to exclude the possibility that class members exist who have materially different terms from those certified by the court. *E.g.*, Pet. 30-31. As above, Objectors' argument amounts to nothing more than a disagreement with the district court's well-supported findings of fact. It raises no compelling legal issues or conflicts among the lower courts, nor does it suggest, despite Objectors' efforts, that there exists any confusion as to the applicable standard to be applied to the approval of settlements. Thus, while Objectors suggest that the district court misapplied the standard set forth in amended Rule 23(e), and that this creates a "conflict" with decisions of other Circuit courts, at the same time they concede that the Rule 23(e) standard does not materially differ from that pre-

viously set forth in this Court's decision in *Amchem v. Windsor*, 521 U.S. 591, 620 (1997). Pet. 20-21 ("Rule 23's Amendments Codify *Amchem*."). Furthermore, the cases upon which they rely, reach the same conclusion. *Drazen v. Pinto*, 106 F.4th 1302, 1329 (11th Cir. 2024) ("In sum, the district court's obligations under Rule 23(e) *and* as a fiduciary for the absent class members essentially coincide.") (emphasis in original); *Briseño v. Henderson*, 998 F.3d 1014, 1023 (9th Cir. 2021) (applying pre-existing enhanced scrutiny for post-certification settlements to pre-certification ones). As before, Objectors' "conflict" is a mere pretext to dress up a factual dispute as a legal one.

Objectors provide no basis to disturb the finding of the district court, affirmed by the Court of Appeals, that "variations in the lease language are immaterial in light of the fact that the question of SOP's liability is central to all class members and is subject to generalized proof," a finding correctly affirmed by the Third Circuit. Pet. App. 66a; *see also* Pet. App. 11a. They identify no lease that is materially different, nor suggest even a category of lease that might be.[13] Instead, their arguments are based upon pure speculation that such lease might exist, coupled with instances of extreme hyperbole—that "there is not even a basis to conclude that named plaintiff shares a common issue with other class members" and that "[i]t takes a leap of faith far too big for Rule 23 to conclude

[13] Objectors do focus upon the so-called "at the well" language in Plaintiff's lease as a pretext to suggest some differences exist. However, as the district court found, that and other differences related to what deductions may be taken do not involve the calculation of "proceeds," and are immaterial. Pet. App. 63a, 66a.

based on a chart that five separate lease groups share cohesive interests." Pet. 24.[14]

Such hyperbole is difficult to fathom, and, as discussed above, conflicts directly with their previous position, proffered in the Marbaker Arbitration that: "Common questions predominate over any individual issues, since Statoil is subject to standard lease terms that apply equally to all members of the class." ECF No. 109-1, ¶ 63. Having previously taken that "leap of faith" themselves, Objectors' criticisms of the courts below ring hollow.

Absent any differences in the leases, the remaining basis for Objectors' argument is the difference between Plaintiff's claim and those of other class members. In truth, Plaintiff's implied breach claim and class members' express breach claim could hardly be more aligned.[15] They are based upon materially identical contractual terms, they challenge identical conduct, and they seek identical monetary damages.

As *Amchem* made clear, and as numerous courts have noted, in the settlement context, neither "variations in the rights and remedies available to

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[14] In fact, courts routinely rely on charts to demonstrate the similarity of lease terms. *See, e.g.*, Anderson *Living Tr. v. Energen Res. Corp.*, 2019 WL 6618168, at *4 (D.N.M. Dec. 5, 2019), *reconsideration denied*, 2020 WL 406365 (D.N.M. Jan. 24, 2020), and cases cited therein.

[15] Furthermore, the fact that Plaintiff's express breach claim was dismissed does not mean it is non-existent. Dismissed claims are routinely settled pending appeal. *E.g.*, *U.S. Bancorp Mortg. Co. v. Bonner Mall P'ship*, 513 U.S. 18 (1994) (suit settled after certiorari granted). Indeed, the Third Circuit reviews virtually every civil appeal to determine whether it should be referred to mediation in order to "facilitate settlement." Third Cir. L.A.R. 33.1-33.2.

injured class members" (*Sullivan v. DB Inves., Inc.*, 667 F.3d 273, 301 (3d Cir. 2011) (*en banc*)); nor "factual differences among the claims of the putative class members" (*In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 310 (3d Cir. 1998)) are sufficient to defeat class certification. *See also In re Hyundai & Kia Fuel Economy Litig.*, 926 F.3d 539, 558 (9th Cir. 2019) (*en banc*); *In re Mex. Money Transfer Litig.*, 267 F.3d 743, 747 (7th Cir. 2001). This is because, when certifying a settlement class, the court need not inquire whether the case "would present intractable management problems." *Amchem Prods.*, 521 U.S. at 620.

At the same time, these purported differences give rise to no conflict, let alone a "fundamental" one, necessary to deny class certification. *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 942 (9th Cir. 2015), and cases cited therein.

The differences in the claims asserted herein are *de minimis* compared to those in *Amchem*, and are dwarfed by the differences between claims of direct and indirect of nationwide purchasers, alleging different state law claims, certified by the decisions cited above. *E.g.*, *TBK Partners, Ltd. v. W. Union Corp.*, 675 F.2d 456, 460 (2d Cir. 1982) (certifying a settlement class that includes merged-out shareholders with appraisal rights and those without); *Anderson Living Tr.*, 2019 WL 6618168, at *6 (certifying class alleging implied duty to market where class representative's claim was dismissed). *See also Weinberg v. Atlas Air Worldwide Holdings, Inc.*, 216 F.R.D. 248, 254 (S.D.N.Y. 2003) (appointing one party lead plaintiff even though he lacked standing to pursue all class

claims where "separate representatives may be appointed, if necessary").[16]

Courts have routinely recognized that a plaintiff may settle a claim even though he has not pleaded it, and even though he could not plead it. It is well-settled that

> in order to achieve a comprehensive settlement that would prevent relitigation of settled questions at the core of a class action, a court may permit the release of a claim based on the identical factual predicate as that underlying the claims in the settled class action even though the claim was not presented and might not have been presentable in the class action."

TBK Partners, 675 F.2d at 460. "There is no impropriety in including in a settlement a description of claims that is somewhat broader than those that have been specifically pleaded. In fact, most settling defendants insist on this." *In re Gen. Am. Life Ins. Co. Sales Pracs. Litig.*, 357 F.3d 800, 805 (8th Cir. 2004). *See also City P'ship Co. v. Atl. Acquisition Ltd. P'ship,* 100 F.3d 1041, 1044 (1st Cir. 1996); *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1287-88 (9th Cir. 1992).

The only true difference among class members, characterized by Objectors as a "red flag," is that the vast majority were bound by arbitration provisions. Pet. 22. Accordingly, the class would likely not have been certified absent the Settlement. Although Objectors argue that this "says" something about Plaintiff's economic motives, they nowhere reveal "what" it "says." *Id.* Given that the Settlement placed

[16] Although not necessary, the Stines were so appointed.

no discount on class members' arbitration claims, but treated them as well or better than Plaintiff's own, the district court did not abuse its discretion when it implicitly found that the Settlement "says" nothing in that regard. *Id.*

C. Any "Initial Presumption" the Court May Have Applied Was Proper and Had No Impact on the Court's Finding that the Settlement Was Fair

Objectors' remaining argument is that, when granting preliminary approval, the district court "concluded that 'preliminary approval' created a 'presumption of fairness' for final approval." Pet. 19. Furthermore, Objectors assert, "that presumption rippled through the approval process," and "amplified" on appeal, improperly shifting the burden to them to prove the Settlement's unfairness. *Id.*[17] Objectors' assertion is built upon yet another mischaracterization of the record. Moreover, it represents another thinly disguised attempt to transform a factual issue subject to the district court's discretion—whether the Settlement is fair—into a manufactured legal one.

First, the district court did not state that preliminary approval created an unqualified presumption of fairness. Instead, the court opined that it only created an "*initial* presumption."[18] Pet. App. 110a. Even then,

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[17] As a preliminary matter, even if "the district court did allude to a presumption of fairness," it "did not shift the burden" of proof to Objectors. *Briseño v. Henderson*, 998 F.3d at 1030, cited by Objectors. A presumption merely shifts the burden of going forward. *St. Mary's Honor Center v. Hicks*, 509 U.S. 502, 507 (1993), citing Federal Rule of Evidence 301. As the lower courts recognized, Plaintiff's burden of proof remained unchanged.

[18] The word "initial" is omitted from Objectors' version.

the district court minimized the impact of that presumption, going on to say: "A preliminary approval, however, is just that, preliminary. It is not a finding that definitively determines the elements of fairness, adequacy, and reasonableness needed for final approval of class action settlements under *Girsch v. Jepsen*, 521 F.2d 153 (3d Cir. 1975)." Pet. App. 111a. The court's reasoning makes clear that any presumption, whether valid or not, did not outlast its preliminary approval.

Further, any presumption, whether the district court's or the Third Circuit's, was based, not upon one factor, as in the principal cases cited by Objectors, *Moses v. New York Times Co.*, 79 F.4th 235 (2d Cir. 2023) and *Briseño*, 998 F.3d 1014, but upon four, those set forth in *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liability Litig.*, 55 F.3d 768, 785 (3d Cir. 1995). Pet. App. 111a.

Any so-called ripple was nowhere evident at final approval. In its thorough and comprehensive opinion, the district court analyzed the Settlement applying the eight factors set forth in *Girsh v. Jepson*, 521 F.2d 153 (3d Cir. 1975), the additional factors set forth in *In re Prudential*, 148 F.3d 283, and those considerations set forth in *In re Baby Prods. Antitrust Litig.*, 708 F.3d 163, 174 (3d Cir. 2013). Most importantly, the district court, far from ignoring the standards set forth in amended Rule 23(e)(2), expressly analyzed them and applied them, comprehensively addressing the third and the fourth. The Third Circuit separately analyzed the Settlement utilizing the *Girsh* factors, and expressly noted district court's review of the other factors. Pet. App. 13a-15a. Thus, any conflict with other circuits is illusory.

Objectors' attempt to fabricate a legal conflict is calculated to disguise the reality that the Petition seeks to reverse the courts' determination of a factual issue to which they have no answer—did the district court abuse its discretion when it determined that the Settlement was fair? As the Third Circuit held, it did not. Pet. App. 15a. There is no basis to disturb the Third Circuit's holding that "the District Court exercised its discretion soundly when it approved the class settlement." *Id.*

As previously noted, most class members were subject to arbitration provisions in their lease. There was a strong likelihood, given the presence of these arbitration provisions, that no class would be certified.[19] Class members would be forced to bring individual arbitrations, the cost of which would likely outweigh, or severely diminish, any recovery. JA0737. As a consequence, the recovery that individual arbitrations might achieve, if any, would, as a practical matter, likely fall far short of the recovery a certified class could.

This conclusion is not based, as are many of Objectors' contentions, upon hypothesis. As the Petition reveals, certain L-29 leaseholders, whose claims Objectors characterize as the strongest, "successfully" litigated an arbitration through trial. In doing so, however, they spent $17,625.00 in arbitration fees alone, merely to recover $3,611.74 plus interest, an outcome far worse than had they participated in the Settlement. Pet. App. 53a. This result demonstrates that the Settlement not only was fair when compared to the maximum most class members could achieve

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[19] *See generally, e.g.*, *Geiger v. Charter Commc'ns, Inc.*, 2019 WL 8105374 at *2 (C.D. Cal. Sept. 9, 2019) (collecting cases).

after trial, but was likely *better*. Nevertheless, the Settlement did not place any discount on the amounts payable to those arbitration class members.

In its opinion, the district court observed that, as set forth in the Ammonite Report submitted in connection with the Settlement, the difference between the total royalty based upon the Resale Price and that based upon the Index Price, was approximately $58 million. Pet. App. 56a.[20] This figure, however, excluded deductions that the downstream subsidiary could have, and would have, charged the upstream subsidiary in connection with the marketing to third parties. If all claimed deductions and other offsets were included, the difference would be reduced to approximately $15.6 million. Pet. App. 243a. Accordingly, the Settlement amount of $7 million, in the worst-case scenario, would represent a recovery of 12% to 13%. If one included the claimed offsets, the recovery was almost 45%. *Id.* The district court found that these amounts were "well within the range of reasonableness," even absent the arbitration provisions, consideration of which "more aptly illustrate[s] that the settlement is reasonable." Pet. App. 56a-57a.

Objectors do not explain how this number is either unfair or inadequate. Indeed, they do not even suggest that Plaintiff might have negotiated a higher amount. Most significantly, they do not even address the principal issue noted above—what could Plaintiff and the class achieve if successful at trial. The reason for Objectors' reticence is plain; as the district court found, and Objectors nowhere dispute, absent Settlement, the overwhelming majority of Settlement class

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[20] These numbers were confirmed by Ammonite. Pet. App. 243a.

members would likely have received nothing. Pet. App. 14a

Objectors offer only two criticisms that go to the substance of the Settlement. First, they argue that, at the outset of the *Marbaker* Action, the Marbaker Objectors agreed to settle the claims of L-29 leaseholders, separate from the rest of the class, in an amount greater than what they received in the final Settlement. Pet. 12. This hardly satisfies Objectors' Rule 23 burden. First, a court may properly exercise its discretion to approve a settlement as fair, even if it is not the highest price that could have been achieved. *Cotton v. Hinton*, 559 F.2d 1326, 1330 (5th Cir. 1977); *Ponzio*, 87 F.4th at 500. Further, as a factual matter, the difference was easily explained by the district court by the change in law during the interim. Pet. App. 41a. Further, the difference is hardly surprising as the threat of individual actions, in stark contrast to that of a class action, wanes rather than waxes as the action approaches trial and scope of the defendant's potential liability comes more sharply into focus. Finally, that counsel for the L-29 leaseholders, unlike Plaintiff, negotiated a separate settlement for its clients raises the issue of whether it achieved that sum at the expense of the rest of the class. The district court's finding was well within its discretion and provides no basis to overturn the Settlement.

Second, Objectors argue that the Settlement is defective because the district court did not place a specific value on the five-year Sunset Period. Counsel based this concession upon a multi-year comparison of the Index Price and the Resale Price. As previously noted, the two prices diverged during a period of months when the index price utilized by Equinor was distorted by an anomalous pipeline bottleneck.

JA1001. As reflected in the Ammonite Report, prior to that anomaly, the Index Price had closely tracked, if not exceeded the Resale Price. Similarly, after that anomaly, the Index Price also closely tracked, if not exceeded the Resale Price. *Id.* But for the delays caused by the litigation tactics of Objectors, the Sunset Period would already have ended without incident. It is due to Objectors that it will not expire until 2028.

As a factual matter, Objectors' so-called "ripple" is pure fiction.

CONCLUSION

For all of the reasons set forth above, this Court should deny the Petition.

Respectfully submitted,

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