



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

CITY OF TAMARAC FIREFIGHTER)
PENSION TRUST FUND, and CITY OF)
MIAMI GENERAL EMPLOYEES' AND)
SANITATION EMPLOYEES')
RETIREMENT TRUST, on Behalf of)
Themselves and all Other Similarly Situated)
Shareholders of CVR Energy, Inc.,)

C.A. No. _____

Plaintiffs,)

v.)

CARL C. ICAHN, BOB G. ALEXANDER,)
SUNGHWAN CHO, GEORGE W. HEBARD)
III, VINCENT J. INTRIERI, JOHN J.)
LIPINSKI, SAMUEL MERKSAMER,)
STEPHEN MONGILLO, DANIEL A.)
NINIVAGGI, JAMES M. STROCK, GLENN)
R. ZANDER, and IEP ENERGY LLC,)

Defendants.)

VERIFIED CLASS ACTION COMPLAINT

Plaintiffs City Of Tamarac Firefighter Pension Trust Fund, and City Of Miami General Employees' And Sanitation Employees' Retirement Trust ("Plaintiffs"), on behalf of themselves and all other similarly situated public shareholders (the "Class") of CVR Energy, Inc. ("CVR" or the "Company"), by their attorneys, make the following allegations against Carl C. Icahn, IEP Energy LLC, ("Icahn"), and the members of CVR's board of directors (the "CVR Board" or "Board"), in support of Plaintiffs' claims relating to Icahn's "creeping tender offer." The allegations of the Complaint are based on the personal knowledge of Plaintiffs as to themselves and on information and belief (including the investigation of counsel and review of publicly available information) as to all other matters stated herein.

SUMMARY OF THE ACTION

1. This case arises from the efforts of Carl Icahn, CVR's controlling shareholder, to effect a creeping tender offer that is designed to freeze out the Company's minority stockholders for inadequate consideration. After acquiring control of the Company through a Tender Offer (defined below), and replacing CVR's Board of Directors, Icahn has now embarked on a plan to acquire 90% of the Company's outstanding stock through public purchases at depressed prices as a precursor to a short-form merger that will eliminate any minority position in the Company without providing them the statutory protections to which they are entitled as long as the minority stake in the Company exceeds 10%. The CVR Board, comprised entirely of Icahn loyalists, is facilitating Icahn's unlawful scheme.

2. In January 2012, Icahn accumulated a nearly 15% stake in the Company. After publicly claiming that the best way to create value for CVR shareholders was for the then-current CVR board of directors (the "Former Board") to put the Company up for sale, in February 2012, Icahn (a) announced his intention to nominate a dissident slate of directors to replace the Former Board and (b) commenced a tender offer (the "Tender Offer") to acquire all outstanding shares of CVR for \$30 per share in cash plus a contingent value right (the "Contingent Value Right"). If the Company was sold within nine months¹ of the closing of the Tender Offer, the Contingent Value Right would entitle holders who tendered their shares to an additional cash payment equal to the value that the Company is sold for in excess of \$30 per share.

¹ This was later amended from nine months to fifteen months.

3. Unlike most tender offers involving a Delaware corporation initiated in the last two decades, Icahn did not obligate himself to conduct a back-end merger on the same terms in the event that he obtained at least 50% of CVR's shares through the Tender Offer.

4. During the next two months, a majority of CVR's shareholders tendered their shares into the Tender Offer, but the Company's poison pill shareholder rights plan ("Poison Pill") prevented Icahn from closing the Tender Offer.

5. On April 19, 2012, the Former Board folded under the pressure of a looming proxy contest. In a "Transaction Agreement" dated April 19, 2012, the Former Board agreed to the immediate replacement of a majority of the Company's Board of Directors with new directors designated by Icahn himself, and to eliminate the Poison Pill to enable Icahn to complete the Tender Offer. In exchange, (i) Icahn agreed to a small extension of the Tender Offer period, (ii) agreed to effect a short-form merger at the Tender Offer price *if* following the extended period 90% or more of the outstanding shares were tendered; and (iii) agreed to engage in a 60-day period to actively solicit bids from third parties.

6. Free from the restrictions of the Poison Pill, Icahn closed the Tender Offer. On May 4, Icahn accepted for payment all of the tendered shares, which provided him with 69% ownership of the Company. Once he became CVR's controlling shareholder, Icahn replaced the Former Board with his own hand-picked nominees, a majority of whom are either current or former Icahn employees.

7. Icahn then offered shareholders an additional period during which to tender their shares for the same consideration paid in the Tender Offer (the “Subsequent Offering Period”). By the expiration of the Subsequent Offering Period on May 18, Icahn had obtained approximately 80% ownership of CVR.

8. The typical 80% shareholder would have two choices – (a) conduct a long-form merger to cash-out the remaining shareholder or (b) do nothing. Recognizing that a long-form merger would implicate a duty of fairness, however, Icahn instead chose to let investors sell down the shares as they learned there would be no back end deal, and now is trying to get to the 90% level by purchasing shares on the open market.

9. As Icahn remained noticeably silent regarding his intention to conduct a back-end merger for the shares of CVR that he did not already own, the Company’s stock price tumbled as shareholders grew concerned that Icahn would not offer to cash them out for \$30 per share plus the previously offered Contingent Value Right. Icahn seized on this opportunity to increase his position without having to pay fair value to the remaining minority shareholders.

10. On May 29, 2012, CVR learned about Icahn’s unlawful scheme. In a Schedule 13D filed with the United States Securities and Exchange Commission (“SEC”) that day, Icahn announced that he had commenced purchasing shares of the Company’s stock on the open market at prices significantly below \$30. Icahn is clearly attempting to obtain 90% ownership of CVR, the level necessary to forcibly acquire the remaining shares through a short-form merger pursuant to 8 *Del. C.* §253 (“Delaware General Corporation Law” or “D.G.C.L”).

11. The board of directors of a Delaware corporation, even one that is controlled, has a duty to protect its shareholders from this type of abuse at the hands of the controller. The CVR Board, which is comprised almost exclusively of Icahn's employees and business associates, has done nothing to protect the Company's shareholders. The cure is simple – adopt a poison pill that forces Icahn to negotiate a buyout price rather than allow him to conduct an open market scheme to game Delaware law. Instead, the Board is knowingly allowing Icahn to effectuate a scheme that will save him tens of millions of dollars, but result in CVR's shareholders being squeezed-out of their investment at an unfair price (the "Squeeze-Out Scheme").

12. As discussed in detail *infra*, the Squeeze-Out Scheme is not entirely fair to CVR's shareholders. As such, Plaintiffs respectfully request that the Court (a) enjoin Icahn from purchasing any more CVR shares on the open market on terms less favorable than those offered in the Tender Offer, (b) compel the Board to adopt a poison pill that will preclude Icahn from buying any more CVR shares unless and until the Board negotiates a back-end merger with Icahn that would provide the Company's remaining shareholders with at least \$30 per share plus the Contingent Value Right; and (c) award monetary damages resulting from Icahn and the CVR Board's breaches of fiduciary duty.

THE PARTIES

13. Plaintiff City of Tamarac Firefighter Pension Trust Fund ("Tamarac") is a retirement fund for firefighters employed by the City of Tamarac, Florida. Tamarac is a stockholder of CVR and has been a stockholder of CVR at all material times alleged in this Complaint.

14. Plaintiff City of Miami General Employees' and Sanitation Employees' Retirement Trust ("Miami") is a retirement fund for the general employees and sanitation workers for the City of Miami, Florida. Miami is a stockholder of CVR and has been a stockholder of CVR at all material times alleged in this Complaint.

15. Non-party CVR operates independent refining assets in Coffeyville, Kansas, and Wynnewood, Oklahoma, with more than 185,000 barrels per day of processing capacity, a marketing network for supplying high value transportation fuels to customers through tanker trucks and pipeline terminals, and a crude oil gathering system serving Kansas, Oklahoma, western Missouri, southwestern Nebraska and Texas. In addition, CVR subsidiaries own a majority interest in and serve as the general partner of CVR Partners, L.P., a producer of ammonia and urea ammonium nitrate fertilizers. CVR is incorporated under the laws of the state of Delaware and the Company's headquarters are located at 2277 Plaza Drive, Suite 500, Sugar Land, Texas, 77479. CVR's common shares trade publicly on the New York Stock Exchange under the ticker symbol "CVI."

16. Defendant Carl C. Icahn, through his affiliates, beneficially owns approximately 80% of CVR's outstanding common stock.

17. Defendant Bob G. Alexander ("Alexander") has served as a director of the Company since May 7, 2012. Alexander was appointed to the Board by Icahn pursuant to the transaction agreement ("Transaction Agreement") entered into between Icahn and the Company, dated April 18, 2012. Alexander, a founder of Alexander Energy Corporation ("Alexander Energy"), served as Chairman of the Board, President and Chief Executive Officer from 1980 to 1996. Alexander Energy merged with National Energy Group, Inc. ("National Energy"), an oil and gas property management company, in 1996 and Alexander served as President and Chief Executive Officer from 1998 to 2006. National Energy was previously indirectly controlled by Icahn.

18. Defendant SungHwan Cho (“Cho”) has served as a director of the Company since May 7, 2012. Cho was appointed to the Board by Icahn pursuant to the Transaction Agreement. Cho has been Senior Vice President and previously Portfolio Company Associate at Icahn Enterprises L.P., an entity controlled by Icahn since October 2006. He is a director of Take-Two Interactive Software Inc. (“Take-Two”), a publisher of interactive entertainment products; PSC Metals Inc. (“PSC”), a metal recycling company; American Railcar Industries, Inc. (“American Railcar”), a railcar manufacturing company; Viskase Companies (“Viskase”), WestPoint International (“WestPoint”) and XO Communications (“XO”), which are each, directly or indirectly, controlled by Icahn. Icahn also has an interest in Take-Two through the ownership of securities.

19. Defendant George W. Hebard III (“Hebard”) has served as a director of the Company since May 21, 2012. Hebard was appointed to the Board by Icahn pursuant to the Transaction Agreement. Hebard has been a Managing Director at Icahn Capital L.P., the entity through which Icahn manages investment funds. From 1998 to 2002, Hebard was an Associate at Icahn Associates Corp.

20. Defendant Vincent J. Intrieri (“Intrieri”) has served as a director of the Company since May 7, 2012. Intrieri was appointed to the Board by Icahn pursuant to the Transaction Agreement. He served as a Senior Managing Director of Icahn Capital Management L.P. from August 8, 2007 until December 31, 2007. From January 1, 2008 to September 30, 2011, Intrieri served as a Senior Managing Director of Icahn Capital L.P., the entity through which Icahn managed third party investment funds and since October 1, 2011, Intrieri has served as Senior Vice President of Icahn Enterprises G.P. and Senior Managing Director of Icahn Capital L.P. Since November 2004, Intrieri has been a Senior Managing Director of Icahn Onshore LP, the general partner of Icahn

Partners, and Icahn Offshore, the general partner of Icahn Master, Icahn Master II and Icahn Master III. Intrieri has served as a director of Icahn Enterprises G.P. Inc., the general partner of Icahn Enterprises L.P. since July 2006. From November 2005 to March 2011, Intrieri was a director of WestPoint. Intrieri also serves on the board of directors of Federal-Mogul Corporation (“Federal-Mogul”), a supplier of automotive products. Since December 2007, Intrieri has been chairman of the board and a director of PSC. From December 2006 to June 2011, he was a director of National Energy. Since January 1, 2005, Intrieri has been Senior Managing Director of Icahn Associates Corp. and High River Limited Partnership, entities primarily engaged in the business of holding and investing in securities. From April 2005 through September 2008, Intrieri served as the President and Chief Executive Officer of Philip Services Corporation (“Philip Services”), an industrial services company. Since August 2005, Intrieri has served as a director of American Railcar. From March 2005 to December 2005, Intrieri was a Senior Vice President, the Treasurer and the Secretary of American Railcar. Since April 2003, Intrieri has been chairman of the board of directors and a director of Viskase. Since March 2011, Intrieri has served as a director of Dynegy Inc. (“Dynegy”), a company primarily engaged in the production and sale of electric energy, capacity and ancillary services. From November 2006 to November 2008, Intrieri served on the board of directors of Lear Corporation (“Lear”), a global supplier of automotive seating and electrical power management systems and components. From August 2008 through September 2009, Intrieri was a director of WCI Communities, Inc. (“WCI”), a homebuilding company. Intrieri also serves on the board of directors of XO. Since January 4, 2011, Intrieri has been a director of Motorola Solutions, Inc. (“Motorola Solutions”), a provider of communication products and services. WestPoint, FederalMogul, PSC, National Energy, Philip Services, American Railcar, Viskase and

XO each are or previously were, directly or indirectly, controlled by Icahn. Icahn also has or previously had an interest in Dynegy, Lear, WCI and Motorola Solutions through the ownership of securities.

21. Defendant John J. Lipinski (“Lipinski”) has been the Company’s Chief Executive Officer since September 2006. Lipinski was first elected to the CVR board of directors in September 2006. Lipinski then served as the Company’s Chairman from October 2007 until his resignation on May 21, 2012. Icahn reappointed Lipinski to the Board on May 23, 2012.

22. Defendant Samuel Merksamer (“Merksamer”) has served as a director of the Company since May 7, 2012. Merksamer was appointed to the Board by Icahn pursuant to the Transaction Agreement. He has served as an investment analyst at Icahn Capital LP, a subsidiary of Icahn Enterprises L.P., since May 2008. Merksamer is responsible for identifying, analyzing and monitoring investment opportunities and portfolio companies for Icahn Capital. Merksamer serves as a director of Dynegy, Viskase, American Railcar, PSC and Federal-Mogul. Viskase, PSC, American Railcar and Federal-Mogul are each, directly or indirectly, controlled by Icahn. Icahn also has an interest in Dynegy through the ownership of securities.

23. Defendant Stephen Mongillo (“Mongillo”) has served as a director of the Company since May 7, 2012. Mongillo was appointed to the Board by Icahn pursuant to the Transaction Agreement. From 2009 to 2011, Mongillo served as a director of American Railcar. From January 2008 to January 2011, Mongillo served as a managing director of Icahn Capital LP, the entity through which Icahn managed third party investment funds. From March 2009 to January 2011, Mongillo served as a director of WestPoint. American Railcar and WestPoint are each, directly or indirectly, controlled by Icahn.

24. Defendant Daniel A. Ninivaggi (“Ninivaggi”) has served as a director of the Company since May 7, 2012. Ninivaggi was appointed to the Board by Icahn pursuant to the Transaction Agreement. He has served as President of Icahn Enterprises L.P. and its general partner, Icahn Enterprises G.P. Inc., since April 5, 2010, and as its Principal Executive Officer, or chief executive, since August 4, 2010. From 2003 until July 2009, Ninivaggi served in a variety of executive positions at Lear Corporation, including as General Counsel from 2003 through 2007, as Senior Vice President from 2004 until 2006, and most recently as Executive Vice President and Chief Administrative Officer from 2006 to 2009. From December 2009 to May 2011, Ninivaggi has also served as a director of CIT Group Inc. (“CIT”), a bank holding company. Ninivaggi also serves as a director of Federal-Mogul and XO. Since December 2010, Ninivaggi has served as a director of Motorola Mobility Holdings, Inc. (“Motorola Mobility”), a provider of mobile communication devices, video and data delivery solutions. Since January 6, 2011, Mr. Ninivaggi has also served as the Interim President and Interim Chief Executive Officer and a director of Tropicana Entertainment Inc. (“Tropicana Entertainment”), a company that is primarily engaged in the business of owning and operating casinos and resorts. Federal-Mogul, XO and Tropicana Entertainment are each, directly or indirectly, controlled by Icahn. Icahn has or previously had interests in Lear, CIT and Motorola Mobility through the ownership of securities.

25. Defendant James M. Strock (“Strock”) has served as a director of the Company since May 21, 2012. Strock was appointed to the Board by Icahn pursuant to the Transaction Agreement.

26. Defendant Glenn R. Zander (“Zander”) has served as a director of the Company since May 7, 2012. Zander was appointed to the Board by Icahn pursuant to the Transaction Agreement. From 1990 to 1994, Zander served as Vice Chairman, Co-

Chief Executive Officer and director of Trans World Airlines (“TWA”), an international airline. He also served as Chief Financial Officer of TWA within that period. During 1992 and 1993, Zander served as the Chief Restructuring Officer of TWA following its Chapter 11 bankruptcy in 1992 and its emergence therefrom in 1993. TWA was formerly indirectly controlled by Icahn.

27. The defendants referred to in paragraphs 17 to 26 above collectively constitute the entirety of the CVR Board. These individuals are hereinafter referred to as the “Individual Defendants” or the “Director Defendants” or the “CVR Directors.”

28. By virtue of their positions as directors and/or officers of CVR and/or their exercise of control and ownership over the business and corporate affairs of the Company, the Individual Defendants have, and at all relevant times had, the power to control and influence and did control and influence and cause the Company to engage in the practices complained of herein. Each Individual Defendant owed and owes CVR’s shareholders fiduciary obligations of candor, due care, good faith, and loyalty and were and are required to: (1) use their ability to control and manage CVR in a fair, just, and equitable manner; (2) act in furtherance of the best interests of its shareholders; (3) act to maximize shareholder value in connection with any change in ownership and control to the extent consistent with governing statutes; (4) govern CVR in such a manner as to heed the expressed views of its public shareholders; (5) refrain from abusing their positions of control; and (6) not favor their own interests at the expense of the Company and its public shareholders.

29. Defendant IEP Energy LLC (“IEP Energy”) is affiliated with Carl C. Icahn and either directly or indirectly owns the shares of common stock of CVR at issue here. IEP Energy is acting for Icahn by purchasing and owning CVR shares. As Icahn’s

alter ego in this matter, IEP is hereinafter included with all references to Icahn, as appropriate.

FACTUAL BACKGROUND

A. Icahn Initiates An Unsolicited Tender Offer For CVR

30. In early January 2012, Icahn began accumulating a large equity position in CVR. On January 13, Icahn filed a Schedule 13D with the SEC announcing that he had purchased a 14.54% stake in the Company.

31. That same day, the Former Board adopted a Poison Pill with a 15% trigger to halt any attempt by Icahn to consummate an unsolicited takeover bid for the Company.

32. By mid-February 2012, Icahn began publicly advocating that the best way to create value for CVR shareholders was to put the Company up for sale.

33. On February 16, 2012, Icahn announced that he (a) was initiating a tender offer to acquire all outstanding CVR stock, (b) would initiate dialogue with a number of potential acquirers during the next several weeks, and (c) intended to nominate a dissident slate for all 9 directorships on the CVR board of directors.

34. Pursuant to the terms of the Tender Offer, Icahn offered tendering shareholders \$30 per share in cash, plus a Contingent Value Right. If the Company was sold within nine months of the closing of the Tender Offer, the Contingent Value Right would entitle holders to an additional cash payment equal to the value that the Company is sold for in excess of \$30 per share.

35. The Tender Offer was subject to a multitude of conditions, including (a) that at least 35.76% of the issued and outstanding shares of CVR were validly tendered and not withdrawn by March 23, 2012 (“Minimum Condition”),² (b) Icahn’s dissident

² That number of shares, when added to the shares already owned by Icahn and his affiliates, represented a majority of the issued and outstanding shares of the Company.

slate of directors was elected to the CVR Board, and (c) the Former Board agreed to eliminate the Poison Pill.

36. Icahn also reserved the right to terminate the Tender Offer if, on or prior to March 23, 2012, the Former Board put the Company up for sale.

37. The Former Board retained Goldman, Sachs & Co. and Deutsche Bank as financial advisors in connection with Icahn's offer. On March 1, 2012, after consultation with its advisors, the Former Board informed the Company's shareholders that the consideration offered pursuant to the Tender Offer was "inadequate and not in the best interests of its stockholders."

38. On March 16, 2012, Icahn extended the Tender Offer previously scheduled to expire on March 23, 2012 to April 2, 2012. Icahn also modified the duration of the Contingent Value Right from 9 months to 15 months following the expiration of the Tender Offer.

B. Icahn Consummates Tender Offer

39. On April 3, 2012, Icahn announced that approximately 55% of the outstanding shares of CVR's common stock had tendered pursuant to the Tender Offer. This amount, when added to the shares already held by Icahn, constituted over 69% of the Company's outstanding shares. Thus, the Minimum Condition was satisfied.

40. The Poison Pill, however, prevented Icahn from successfully consummating the Tender Offer. To provide additional time to negotiate with the Board regarding elimination of the Poison Pill, Icahn extended the expiration date for the Tender Offer until April 30, 2012.

41. Responding to the will of the shareholders and looking to avoid the looming proxy contest, the Former Board capitulated. On April 19, 2012, the Former

Board and Icahn entered into the Transaction Agreement which paved the way for Icahn to consummate the Tender Offer and assume control of CVR.

42. Pursuant to the Transaction Agreement:

- i. The Former Board agreed to eliminate the Poison Pill;
- ii. Seven of nine members of the Former Board would be replaced immediately upon closing of the Tender Offer with seven of Icahn's nominees (Alexander, Cho, Intrieri, Merksamer, Mongillo, Ninivaggi and Zander);
- iii. Icahn would provide an additional period of ten business days after closing of the Tender Offer to allow CVR shareholders another opportunity to tender if they so desire for the same \$30 per share in cash plus the Contingent Value Right;
- iv. If, as a result of the Tender Offer, Icahn ended up owning at least 90% of CVR's outstanding shares, Icahn would promptly effectuate a short-form merger, in which all remaining shareholders would receive the same consideration offered in the Tender Offer;³ and
- v. Promptly following the consummation of the Tender Offer, Icahn would cause CVR to engage one or more independent, nationally-recognized investment banking firms to conduct a 60-day sale process to encourage acquisition proposals from third parties.⁴

³ §2.1 of the Transaction Agreement states, in relevant part, “[i]f, following the Offer Closing or the Subsequent Offer Closing, the Offeror and its Affiliates shall hold of record, in the aggregate, at least 90% of the outstanding Shares, the Offeror shall take all necessary and appropriate action to cause a merger of the Company in accordance with Section 253 of the Delaware General Corporation Law ... at a price per Share equal to the Offer Price [*i.e.*, \$30 per share in cash plus the Contingent Value Right] ...

⁴ Icahn announced he would support any bona fide, all-cash offer received within this 60-day marketing period that would result in all CVR stockholders receiving a net amount of at least \$35 per share.

43. Since the creation of the poison pill, boards of directors have forced any bidder conducting a tender offer to do a back-end merger at the same price. The core justification for the poison pill is to preclude coercive two-tier bidding. In this case, Icahn's only self-created obligation was to conduct a back-end merger if the Tender Offer and Subsequent Offering Period yielded him 90% or more of CVR's shares. The Company's April 19 press release announcing the Transaction Agreement stated, in relevant part:

“If at any time Mr. Icahn owns 90% of the outstanding shares, he will complete a short-form merger under Delaware law pursuant to which all remaining outstanding shares will be cancelled in exchange for receiving the same per share consideration as paid in the tender offer plus the CCP.”
(Emphasis added)

44. On April 23, 2012, Icahn announced he was extending the expiration of Tender Offer until May 4, 2012.

45. On May 7, 2012, Icahn announced that on May 4, 2012, 48,112,317 shares of common stock of CVR were validly tendered pursuant to the Tender Offer. Icahn accepted for payment all of the tendered shares, which represented approximately 63% of all CVR shares held by shareholders unaffiliated with Icahn. Upon the purchase of the shares, Icahn owned approximately 69% of the Company. Icahn also announced that the Subsequent Offering Period had commenced and would expire on May 18, 2012.

46. During the Subsequent Offering Period, an additional 9,488,431 shares were tendered to Icahn, all of which were accepted for payment on May 18, 2012. Combined with the 60,696,544 shares held by Icahn prior to commencement of the Subsequent Offering Period, Icahn beneficially owned 70,184,975 shares of CVR common stock, representing approximately 80% of the Company's total shares outstanding.

47. Upon the expiration of the Subsequent Offering Period, the two remaining directors from the Former Board were replaced by Icahn nominees Hebard and Strock.

C. Icahn Begins Abusing Non-Tendering CVR Shareholders

48. On the days following the Tender Offer, Icahn was noticeably silent regarding his intention to conduct a back-end merger for the shares of CVR that he did not already own. By May 24, 2012, the Company’s stock price tumbled below \$27 per share as shareholders grew concerned that Icahn would not offer to cash them out for \$30 per share plus the previously offered Contingent Value Right.

49. On May 29, 2012, Icahn filed a Schedule 13D with the SEC announcing that he had commenced purchasing CVR shares on the open market for prices below \$30 per share. Between May 22 and May 25, Icahn made the following open market purchases of CVR stock:

Date	Number of Shares	Price
5/22/12	600,000	\$29.30
5/24/12	53,000	\$26.65
5/25/12	1,000,000	\$26.62

50. Icahn’s open market purchases confirmed shareholders’ suspicion that Icahn had no intention of providing CVR’s non-tendering shareholders with \$30 per share plus the Contingent Value Right. Instead, Icahn intended to reach the 90% short-form merger threshold through open market purchases and then “squeeze-out” the remaining 10% of CVR shareholders at a price significantly below \$30 per share.

51. Confirmation of Icahn’s scheme resulted in further downward pressure on CVR’s stock price. On June 1, the Company’s stock fell below \$25 per share.

52. On June 4, the Company confirmed that Icahn is not obligated to and will not be providing the Tender Offer consideration in any short form merger resulting from Icahn's open market purchases. Specifically, in a June 4 press release, the Company stated that: "Icahn Enterprises did not receive 90 percent of CVR common stock relating to the subsequent offering period of the Icahn tender offer, there will not be a short form merger between CVR and Icahn Enterprises as a result of the April 18 agreement."

53. The Squeeze-Out Scheme will continue to coerce additional CVR stockholders to sell to Icahn on the open market at prices significantly below fair value. While the Company's remaining shareholders would clearly prefer to receive \$30 per share and the Contingent Value Right, they know that Icahn will in all likelihood be offering less in any squeeze-out merger pursuant to D.G.C.L. §253. If shareholders want to challenge the consideration offered in a short-form merger, the only remedy is an appraisal proceeding under D.G.C.L. §262. Thus, rational shareholders presently are being coerced to sell to Icahn now on the open market instead of being left completely unprotected against Icahn's abuse in a short-form merger.

D. The Controlled Board Facilitates Icahn's Unlawful Scheme

54. Once any genuinely independent board of directors learned of Icahn's scheme, such a board would have adopted a poison pill to stop Icahn from making any more open market purchases unless and until the Board was able to negotiate a cash-out merger that provided the Company's remaining shareholders with fair value (*i.e.*, at least \$30 per share plus the Contingent Value Right).

55. The CVR Board, however, is anything but independent. As detailed above, all ten members of the Board are Icahn appointees. Six directors are current Icahn employees (Cho, Hebard, Intrieri, Merksamer, Mongillo, and Ninvaggi) and two directors are former executives of Icahn-controlled companies (Alexander and Zander). Only

director Lipinski, CVR's CEO, was unaffiliated with Icahn prior to commencement of the Tender Offer. But Lipinski is no longer independent as his livelihood now hinges on his unwavering support of Icahn, the Company's controlling shareholder.

56. Unsurprisingly, this Board stocked with Icahn loyalists has done nothing to protect the Company's remaining shareholders from Icahn's abuse. Moreover, it is inconceivable that the Board will ever take any action to stop Icahn's unlawful scheme unless compelled by this Court.

CLASS ACTION ALLEGATIONS

57. Plaintiffs bring this action pursuant to Rule 23 of the Rules of the Court of Chancery, individually and on behalf of all other stockholders of the Company (except the defendants herein and any persons, firm, trust, corporation, or other entity related to or affiliated with them and their successors in interest), who are or will be threatened with injury arising from defendants' actions, as more fully described herein (the "Class").

58. This action is properly maintainable as a class action for the following reasons:

- i. The Class is so numerous that joinder of all members is impracticable. As of May 29, 2012, CVR had 17,246,894 shares of common stock outstanding that were held by shareholders other than Icahn. Upon information and belief, CVR common stock is owned by hundreds, if not thousands, of shareholders of record nationwide.
- ii. Plaintiffs are committed to prosecuting this action and have retained competent counsel experienced in litigation of this nature. Plaintiffs' claims are typical of the claims of the other members of the Class and Plaintiffs have the same interests as the other members of the Class. Accordingly, Plaintiffs are adequate representatives of the Class and will fairly and adequately protect the interests of the Class.
- iii. The prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying

adjudications with respect to individual members of the Class, which would establish incompatible standards of conduct for defendants, or adjudications with respect to individual members of the Class which would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

- iv. Injunctive relief on behalf of the Class as a whole will be entirely appropriate because defendants have acted, or refused to act, on grounds generally applicable and causing injury to the Class.

59. There are questions of law and fact which are common to the Class and which predominate over questions affecting any individual class member. The common questions include, *inter alia*, the following:

- i. Whether Icahn breached his fiduciary duties as CVR's controlling shareholder in using coercive and manipulative tactics to squeeze-out the Company's remaining shareholders at an unfair price;
- ii. Whether the Board breached its fiduciary duties by failing to adopt a poison pill or taking any other step to stop Icahn's unlawful attempt to squeeze-out CVR's remaining shareholders at an unfair price;
- iii. Whether Plaintiff and the other members of the Class would be irreparably harmed if Icahn is not enjoined from effectuating the scheme described herein; and
- iv. Whether Plaintiff and the other members of the Class are entitled to equitable relief and/or preliminary or permanent injunctive relief.

CLAIMS FOR RELIEF

COUNT I

(Class Action Claim For Breaches of Fiduciary Duties Against Icahn)

60. Plaintiffs repeat and reallege each and every allegation above as if set forth in full herein.

61. As the controlling shareholder of CVR, Icahn owes the Class the utmost fiduciary duties of due care, good faith, and loyalty.

62. Icahn's financial interests are adverse to the financial interests of CVR's public shareholders in connection with the Squeeze-Out Scheme.

63. Icahn must, but has not, acted in accordance with Delaware's stringent "entire fairness" standard in connection with the Squeeze-Out Scheme. Under this standard, Icahn must (but cannot) establish that the Squeeze-Out Scheme is the result of a fair process that returns a fair price for all CVR shareholders. The consideration already paid and that is likely payable pursuant to the Squeeze-Out Scheme is inadequate and unfair, and Icahn has dominated and controlled the Board's process, thus breaching his fiduciary duties.

64. Icahn has failed to fulfill his fiduciary duties in connection with the Squeeze-Out Scheme.

65. Plaintiffs and the Class have been harmed by these breaches of fiduciary duty because they have received or will receive an unfair price as a result of the unlawful Squeeze-Out Scheme.

66. Plaintiffs and the Class have no adequate remedy at law.

COUNT II

(Class Claim For Breaches of Fiduciary Duty Against The CVR Board)

67. Plaintiffs repeat and reallege each and every allegation above as if set forth in full herein.

68. The CVR Directors owe the Class the utmost fiduciary duties of due care, good faith, and loyalty.

69. The CVR Directors have breached those fiduciary duties by failing to adopt a poison pill or taking any other step to prohibit Icahn from making any more open market purchases unless and until the Board was able to negotiate a cash-out merger that provided the Company's remaining shareholders with fair value (*i.e.*, at least \$30 per share plus the Contingent Value Right).

70. The CVR Directors are obligated by their fiduciary duties and the entire fairness standard to ensure that any attempt by Icahn, an 80% holder of CVR's stock, is accomplished by fair dealing and in a fair process that returns a fair price for all CVR shareholders. The CVR Directors have breached these duties.

71. Plaintiffs and the Class have no adequate remedy at law.

COUNT III

(Aiding and Abetting Against Icahn and IEP Energy LLC)

72. Plaintiffs repeat and reallege each and every allegation above as if set forth in full herein.

73. Defendants IEP Energy, LLC and Icahn were aware of the Individual Defendants' fiduciary duties.

74. Icahn controls the Board, and each of the Individual Defendants serves as a CVR director at Icahn's behest.

75. Icahn induced the Individual Defendants not to implement a Poison Pill which would have thwarted the "Squeeze-Out plan."

76. Defendants IEP Energy, LLC and Icahn were aware that the Individual Defendants' were assisting in the "squeeze-out plan" by not enacting a Poison Pill to protect shareholders.

77. As a result of the conduct of IEP Energy, LLC and Icahn, the CVR shareholders suffered harm.

78. Plaintiffs and the Class have no adequate remedy at law.

RELIEF REQUESTED

WHEREFORE, Plaintiffs demand judgment as follows:

- (a) Declaring that this action is properly maintainable as a class action;
- (b) Declaring that Icahn has breached his fiduciary duties to the Class;
- (c) Declaring that the Director Defendants have breached their fiduciary duties to the Class;
- (d) Enjoining Icahn from purchasing any more CVR shares on the open market on terms less favorable than those offered in the Tender Offer;

- (e) Compelling the Board to adopt a poison pill that would preclude Icahn from buying any more CVR shares unless and until the Board negotiates a back-end merger with Icahn that would provide the Company's remaining shareholders with at least \$30 per share in cash plus the Contingent Value Right;
- (f) Awarding the Class compensatory damages, together with pre- and post-judgment interest;
- (g) Awarding Plaintiffs the costs and disbursements of this action, including attorneys', accountants', and experts' fees; and
- (h) Awarding such other and further relief as is just and equitable.

Dated: June 5, 2012

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