

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CHARLES N. WARREN AND ROBERT T.
WARREN

PLAINTIFFS,

vs.

CHESAPEAKE EXPLORATION, LLC AND
CHESAPEAKE OPERATING, INC,

DEFENDANTS.

CAUSE NO. _____

COMPLAINT – CLASS ACTION

JURY DEMANDED

COMPLAINT

Charles N. Warren and Robert T. Warren (“the plaintiffs”) bring this action on behalf of themselves and a class of all other persons similarly situated against Chesapeake Exploration, LLC and Chesapeake Operating, Inc. (collectively “Chesapeake Entities”).

I. SUMMARY.

1. The plaintiffs own leasehold royalty interests within Johnson and/or Tarrant Counties, Texas. FSOC Gas Co. Ltd. entered into oil and gas leases with each of the plaintiffs, thereafter assigning its interest to the Chesapeake Entities. The Chesapeake Entities, acting as Lessee and operator, have calculated the plaintiffs’ gas-royalty payments in a way that reduces the plaintiffs’ royalties payment by subtracting certain costs for post-production services, such as gas gathering, marketing and transportation. However, the leases expressly prohibit the Chesapeake Entities’ deductions. The plaintiffs bring this claim against the Chesapeake Entities

based upon their underpayment of royalties on natural gas and/or constituents of the gas stream produced from wells drilled under FSOC leases by taking improper deductions, all as more fully described below.

II. PARTIES.

A. The Plaintiffs.

2. Charles N. Warren (“C. Warren”) is an individual residing at 7428 Malabar Lane, Dallas, Texas 75230.

3. Robert T. Warren (“R. Warren”) is an individual residing at 1813 Glenwick, Plano, Texas 77075.

B. The Defendants.

4. The defendant Chesapeake Exploration, LLC (“Chesapeake Exploration”), is an Oklahoma Domestic Limited Liability Company doing business in the state of Oklahoma. Chesapeake Exploration may be served with process by serving its registered agent, the Corporation Company, 1833 South Morgan Road, Oklahoma City, Oklahoma 73128.

5. The defendant Chesapeake Operating, Inc. (“Chesapeake Operating”) is an Oklahoma Domestic Limited Liability Company doing business in the State of Oklahoma. Chesapeake Operating may be served with process by serving its registered agent, the Corporation Company, 1833 South Morgan Road, Oklahoma City, Oklahoma 73128.

6. The acts by each defendant as alleged in this complaint were authorized, ordered or done by their officers, agents, affiliates, employees or representatives, while actively engaged in the management of each defendant's business or affairs, and within the scope of their employment or agency with each defendant.

III. VENUE AND JURISDICTION.

7. This Court has jurisdiction over this class action pursuant to 28 U.S.C. § 1332, as amended by the Class Action Fairness Act of 2005, because, as alleged herein, the matter in controversy exceeds \$5,000,000.00, exclusive of interest and costs, and is a class action in which one or more members of the Class is a citizen of a state different from a Defendant. See 28 U.S.C. § 1332(d)(2)(A). The plaintiffs are citizens of Texas. Chesapeake Entities are citizens of Oklahoma.

8. This Court has jurisdiction over the defendants because their wrongful acts occurred and caused damages to the plaintiffs and other class members in this district.

9. Venue is proper in this division for one or more of the following reasons: (i) the oil and gas leaseholds and wells (and royalties therefrom) are located in Tarrant and Johnson Counties, Texas, (ii) C. Warren resides in Dallas Texas, Dallas County, Texas, and (iii) all defendants have conducted substantial business in this district. Venue is therefore proper in this Court pursuant to 28 U.S.C. §§1391(a) & (c).

IV. FACTUAL ALLEGATIONS.

10. FSOC Gas Co. Ltd., or affiliated entities such as Four Sevens Oil Co., Ltd., ("FSOC") entered into over 300 leases in Tarrant County and Johnson County,

Texas. These leases are within the larger "Barnett Shale" formation that covers a large portion of northern Texas and southern Oklahoma. Each of the plaintiffs, specifically, C. Warren and R. Warren, as lessors, each entered into a separate but materially identical Oil, Gas and Mineral Lease (a "Lease") with FSOC Gas Co. Ltd. , as lessee, each dated May 17, 2006 (Exhibits "A-1" to "A-2").

11. FSOC thereafter assigned its interest in the plaintiffs' leases to Chesapeake Exploration, which, in turn, contracted with its affiliate, Chesapeake Operating, to drill and operate wells on the leases. Chesapeake Operating began drilling wells on the leases and, in the case of the plaintiffs, started production in March of 2008. The wells are gas wells, which means that they predominantly produce natural gas and associated fluids.

12. Some oil and gas leases provide that the lessee may deduct from the sales price or market value of the gas the costs of treating, marketing and transporting the gas to market. Other leases, such as the ones at issue herein, expressly prohibit the lessee from deducting any such expenses from the royalty payable to the lessor. In the instant case, the FSOC leases provides, in relevant part, that:

Notwithstanding anything to the contrary herein contained, all royalty paid to Lessor shall be free of all costs and expenses related to the exploration, production and marketing of oil and gas production from the Lease including, but not limited to, costs of compression, dehydration, treatment and transportation. Lessor will, however, bear a proportionate part of all those expenses imposed upon Lessee by its gas sales contract to the extent incurred subsequent to those that are obligations of Lessee.¹

¹ Exhibits "A-1" to "A-2," each at "Addendum I, ¶ 4."

The phrase “obligations of Lessee,” in the last sentence of the quoted language, relates to the post-production costs, such as marketing, which Lessee has expressly accepted as its obligation in the first sentence of the quoted language.

13. But instead of paying royalty without deduction of post-production costs, as required by the Lease, the Chesapeake Entities improperly **subtracted** post production costs from the royalty due to the plaintiffs. The Chesapeake Entities employed a scheme whereby they ignored the contract language and made extensive deductions of post-production costs that were the Chesapeake Entities’ obligations.

14. At no time did the royalty settlement check stubs sent by the Chesapeake Entities ever show that post-production cost deductions were being made. (See sample settlement statement attached as Exhibit “B”).

V. CLASS ACTION ALLEGATIONS.

A. The plaintiffs’ tentative class definition.

15. The plaintiffs bring this case for their individual claims as well as in the form of a representative action, pursuant to FED. R. CIV. P. 23(a) and (b)(3) as follows:

All royalty owners bound by FSOC leases that FSOC assigned to Chesapeake Exploration (including predecessors, successors, and affiliates) from wells located Johnson or Tarrant Counties, Texas, that have had produced gas and/or gas constituents (such as residue gas or methane, natural gas liquids, helium, or condensate) from 2006 to the present.

Excluded from the class are: (1) the Mineral Management Service (Indian tribes and the United States); and (2) Chesapeake Exploration, its affiliates, predecessors, and employees, officers and directors.

B. The proposed class meets the prerequisites for class treatment. FED. R. CIV. P. 23 (a).

1. Numerosity. “[T]he class is so numerous that joinder of all members is impracticable.” FED. R. CIV. P. 23 (a)(1).

16. The class members are so numerous and geographically dispersed that joinder of all members is impracticable. Chesapeake Operating operates over 1000 wells in Johnson and Tarrant Counties, Texas, with at least one royalty owner, and occasionally more, for each well. While many royalty owners reside in Texas, many others may reside in numerous other states, and perhaps other countries. The Chesapeake Entities have within their possession or control the necessary records identifying all class member individuals. Chesapeake Exploration (including predecessors, successors and affiliates) has paid royalties, from 2006 to present, from wells located within Johnson and Tarrant Counties, Texas.

2. Typical and Commonality. “[T]here are questions of law or fact common to the class” and “there are questions of law or fact common to the class[.]” FED. R. CIV. P. 23 (a)(2-3).

17. The plaintiffs and all class members share typical and common claims.

Among the typical and common claims are the following:

- a. As a result of the Chesapeake Entities’ scheme, the class members (like the plaintiffs) have been charged post-production deductions for placing the gas and its constituent parts into marketable condition when, under the FSOC leases, it was the sole obligation of the Chesapeake Entities;
- b. As a result of the Chesapeake Entities’ scheme, the class members (like the plaintiffs) received royalty based on a value that was far below what the Chesapeake Entities or their affiliates received in

their first true arm's-length sales transactions for the production from the class members' (like the plaintiffs') wells;

- c. As a result of the Chesapeake Entities' scheme, the class members (like the plaintiffs) had their royalty interests calculated solely according to the internal accounting, improper royalty payment formulas, and record-keeping operations of the Chesapeake Entities which were not known to the class members;
- d. As a result of the Chesapeake Entities' scheme, the class members (like the plaintiffs) only saw the Chesapeake Entities' "check stub forms" and were denied any notice as to how the Chesapeake Entities actually calculated the class members' (like the plaintiffs') royalty payments; and
- e. The class members (like the plaintiffs) all share the same legal claims.

3. Adequacy. "[T]he representative parties will fairly and adequately protect the interests of the class." FED. R. CIV. P. 23 (a)(4).

18. The plaintiffs have retained counsel competent and experienced in class action and royalty owner litigation. The plaintiffs will fairly and adequately protect the interests of the members of the class members. The plaintiffs are royalty owners under the FSOC leases assigned to the Chesapeake Entities and understand their duties as class representatives.

C. The Court can maintain this case as a class action. FED. R. CIV. P. 23 (b)(3).

1. Predominance. "[T]he questions of law or fact common to class members predominate over any questions affecting only individual members" FED. R. CIV. P. 23 (b)(3).

19. The law applicable to all of the class members (included the plaintiffs) is unified – Texas law. There can be no question that the predominate issues in this case

will be whether the plaintiffs' interpretation of the law is correct, and if it is, does it apply to all other class members?

20. This Court faces many questions of fact that are uniform to all class members. These include the following:

- a. Are the members of the class (including the plaintiffs) and the Chesapeake Entities bound by the exact same or legally the same terms concerning how the royalty payment should be calculated?
- b. Did the members of the class (including the plaintiffs) suffer damages from the Chesapeake Entities' scheme, as described above?
- c. Is the class entitled to its attorneys' fees and costs?

2. **Superiority.** “[A] class action is superior to other available methods for fairly and efficiently adjudicating the controversy.” FED. R. CIV. P. 23 (b)(3).

21. This Court's election to maintain this case as a class action is appropriate and is superior to the alternative of numerous individual lawsuits by members of the class. The Court should consider these pertinent factors:

- a. Federal courts' resources are limited, and we should use those resources efficiently.
- b. Based upon counsel's investigation, there is only one pending lawsuit similar to this litigation -- *Aboukhair Minerals, Ltd. et al. v. Chesapeake Operating, Inc., et al.*, Cause No. 3:12-cv-02120-P (N.D. Tex. Jul. 3, 2012). That is about 1/300 of potential claims.
- c. Unless this Court allows class action treatment, one of two things will occur: (a) this Court will be flooded with similar lawsuits, or (b) royalty holders with legitimate claims will not receive relief. Neither result is superior to a class action resolving these claims at once.

- d. A class action will greatly reduce the cost of litigation between the class members (including the plaintiffs) and the Chesapeake Entities: (1) there is no need for individual class members to testify in order to establish the Chesapeake Entities' liability (*e.g.*, what could any class member know about the Chesapeake Entities' scheme that any other class member would know?); (2) experts necessary for the class (including the plaintiffs) can be unified – such as giving a succinct view of the class' damages based upon on model of the Chesapeake Entities' payment of royalties under a single lease form; and (3) the Chesapeake Entities and their employees will be subjected to unified depositions, not many, separate ones.
- e. Likewise, class action treatment will avoid the possibility of inconsistent and/or varying results in this matter arising out of the same facts.
- f. This Court will encounter no difficulties in the management of this class action. This Court is the fair and efficient place to resolve this claim for all class members.

VI. CLAIMS.

A. Breach of Contract.

22. The class members (including the plaintiffs) entered into written, executed, oil and gas leases with FSOC. These leases belong to and are the responsibility of the Chesapeake Entities. As stated above, the Chesapeake Entities have violated the leases and owe damages.

23. The plaintiffs explained to the defendants, before filing suit, how the Chesapeake Entities violated the leases, but the Chesapeake Entities did not satisfactorily respond. Thus, the plaintiffs have met all conditions precedent to the lawsuit.

B. Accounting.

26. The class members (including the plaintiffs) alternatively seek an equitable accounting and disgorgement of all monies owed under the leases in question that defendants have diverted, converted, and otherwise wrongfully have withheld, together with an award of interest on all such monies, paid at the highest interest rate allowed by law or equity -- whether that be at the Chesapeake Entities' internal rate of return or some other rate under applicable case law or equitable principles.

VII. PRAYER FOR RELIEF.

The plaintiffs pray for orders and ultimately a judgment against the Chesapeake Entities including the following:

- a. an order certifying this action pursuant to FED. R. CIV. PRO. 23 as a class action with reasonable notice to be given to members of the Class;
- b. a judgment awarding the class (including the plaintiffs) damages from the Chesapeake Entities' breach of contract and unjust enrichment, including but not limited to disgorgement, interest at the highest allowable rate (such as lawful, equitable, or internal rate of return);
- c. an award of compensatory damages;
- d. an award of plaintiffs' costs of prosecuting this action
- e. together with an award for plaintiffs' reasonable attorneys' fees;
- f. an accounting of all underpayments, non-payments, and wrongful deductions regarding the members of the class (including the plaintiffs);
- g. an order permanently enjoining the Chesapeake Entities from continuing to engage in the unlawful conduct described herein; and

- h. granting such other relief as this Court may deem just, equitable and proper.

VIII. JURY DEMAND

26. The plaintiffs demand their right to a trial by a jury.

Respectfully submitted,

STRASBURGER & PRICE, LLP

Robert M. O'Boyle– Lead Counsel
Texas State Bar No. 15165425
Email: bob.oboyle@strasburger.com

Clinton A. Rosenthal
Texas State Bar No. 24037393
Email: clint.rosenthal@strasburger.com

Perry Brooks Building
720 Brazos Street, Suite 700
Austin, Texas 78701
Telephone: (512) 499-3600
Facsimile: (512) 499-3660

CLEARMAN|PREBEG LLP

By: Scott M. Clearman
Scott M. Clearman

Scott M. Clearman
Texas State Bar No. 04350090
Email: sclearman@clearmanprebeg.com

The Esperson Buildings
815 Walker, Suite 1040
Houston, Texas 77002
Telephone: (713) 223-7070
Facsimile: (713) 223-7071