

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
SOUTHERN DIVISION
PIKEVILLE

APPALACHIAN LAND COMPANY,)	
)	
Plaintiff,)	Civil Action No. 7:08-139-KKC
)	
v.)	
)	
EQT PRODUCTION COMPANY f/k/a)	
EQUITABLE PRODUCTION COMPANY,)	
)	
Defendants.)	

ORDER GRANTING PLAINTIFFS’ MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND MOTION FOR ATTORNEYS’ FEES, REIMBURSEMENT OF COSTS AND SERVICE AWARD

THIS MATTER comes before the Court on Plaintiffs’ Unopposed Motion for Final Approval of Class Action Settlement (“Final Approval Motion”), Plaintiff’s Unopposed Motion for Attorneys’ Fees, Reimbursement of Costs and Service Award (“Fee Motion”), and Plaintiff’s Supplement to its Unopposed Motion for Attorneys Fees, Reimbursement of Costs, and Service Award (collectively “Motions”) pursuant to Rule 23 of the Federal Rules of Civil Procedure. The Motions are unopposed by EQT Production Company f/k/a Equitable Production Company (“Defendant”).

After appropriate notice to class members was provided as required by the Court’s Order Granting Preliminary Approval of Class Action Settlement (Doc. 144), the Court and the Parties received no objections to the settlement conditionally entered on August 22, 2019 (“Settlement”).

On July 24, 2020, the Court held a hearing on the Motions and is satisfied as to the fairness, reasonableness, and adequacy of the Settlement, and the fairness and reasonableness of the fees, expenses, and service award provided herein. Therefore, having considered the Motions, the supporting Memorandums, materials filed with the Motions including the Settlement Agreement¹, discussions with counsel during the hearing held on July 24, 2020, and other appropriate matters of record, concludes that good cause exists to grant the Motions. Therefore the Court GRANTS the Final Approval Motion, APPROVES the Settlement, and GRANTS the Fee Motion and its supplement.

THE COURT HEREBY FINDS AS FOLLOWS:

1. The court confirms its previous preliminary findings in the Preliminary Approval Order (Doc.144) and finds that the settlement of the present action (the “Lawsuit”) satisfies the applicable prerequisites for class action treatment under FED. R. CIV. P. 23(a) and 23(b)(3) as previously certified in this Court’s Order and Opinion (Doc. 121). Specifically, the Court finds that the Settlement Class as certified is so numerous that joinder of all members is not practicable, that questions of law and fact are common to the Settlement Class, that the claims of the Plaintiffs are typical of the claims of the Settlement Class, that the Plaintiffs and their counsel have and will fairly and adequately protect the interests of the Settlement Class without conflict of interest, that questions of law and fact common to the members of the Settlement Class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

2. Notice to the Settlement Class as required by Rule 23(e) of the Federal Rules of Civil Procedure has been provided in accordance with the Court’s Preliminary Approval Order,

¹ This Order incorporates by reference the definitions in the Settlement Agreement, and all terms herein shall have the same meaning as set forth in the Settlement Agreement.

and Notice was given in an adequate and sufficient manner. The information contained in the Declaration of Agnieszka Jeter Regarding Implementation of Notice outlining the plan effectuated by the Settlement Administrator, including direct mailing at all times available, constitutes the best notice practicable under the circumstances, and satisfies all requirements of Rule 23(e) and due process.

3. The Court has considered all relevant factors for determining the fairness of the Settlement and has concluded that all such factors weigh in favor of granting final approval. The Settlement was a result of arm's-length negotiation by experienced counsel with an understanding of the strengths and weaknesses of their respective cases. Negotiation occurred with the benefit of adequate investigation, discovery, and due diligence, and with the assistance of a well-respected independent mediator. Among the factors that were considered are those set forth in the Briefing on Final Approval, Attorneys' Fees, and Expenses. As part of the Lawsuit, Class Counsel have conducted a detailed investigation of the facts and analyzed the relevant legal issues. Although the Plaintiffs and Class Counsel believe that the claims asserted in the Complaint have merit, they also have reasonably and adequately examined the benefits to be obtained under the Settlement compared to the costs, risks, and delays associated with the continued litigation of these claims.

4. The Court finds that the Settlement is fair, reasonable, and adequate, particularly in light of the complexity, expense, and duration of the litigation and the risks involved in establishing liability and damages and in maintaining class action status through trial and appeal.

5. The benefits to the Settlement Class constitute fair value given in exchange for the release of the claims of the Settlement Class. The Court finds that the consideration to be provided under the Settlement is reasonable in type and scope considering the facts and

circumstances of this case, the types of claims and defenses asserted in the Lawsuit, the claims to be released, and the risks associated with the continued litigation of these claims.

6. The Court finds that in all respects, the Settlement treats class members equitably in relation to each other, and that the method of distribution of relief is fair, appropriate and efficient. A claim form is required for settlement qualification only (which includes demographic information and verification of class status), which is justified since the Parties otherwise would not have all of the information necessary to determine the entitlement to the reimbursement. The method of processing those claim forms is likewise fair, reasonable and adequate. Finally, there are no side agreements other than those expressed in the Settlement Agreement itself.

7. The Parties and Class Members have irrevocably submitted to the exclusive jurisdiction of this Court for any suit, action, proceeding or dispute arising out of the Settlement.

8. It is necessary to protect this Court's jurisdiction and ability to enforce this judgment, and also in the best interest of the Parties and the Class Members and consistent with principles of comity, judicial economy and the strong federal policy favoring settlement, that any dispute between any Class Member (including any dispute as to whether any person is a Class Member) and any Released Party which in any way relates to the applicability or scope of the Settlement, or this Final Judgment and Order of Dismissal, should be presented exclusively to this Court for resolution by this Court.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

9. The Court acknowledges prior certification of the Class, consisting of the following:

All persons and entities that, during the period of January 1, 1995 through July 31, 2016, were lessors on Oil and Gas Leases with Equitable, or its predecessors in title, covering lands in Kentucky, which obligate the lessee to pay royalties on gas produced from wells at a rate of one-eighth of the market price received at the wellhead and which leases do

not authorize the deduction of severances taxes. The defined class excludes: (1) the United States of America; (2) any Judge or Magistrate presiding over this action and members of their families; (3) Equitable, its affiliates, its predecessors-in-title, and its respective employees, officers and directors; and (4) potential members of the class who have been paid and accepted reimbursement for withheld severance taxes during the class period.

10. The Settlement Agreement submitted by the Parties is finally approved pursuant to FED. R. CIV. P. 23(e) as being fair, reasonable, adequate, and in the best interests of the Settlement Class. It shall be binding on Plaintiffs, Defendant, and all members of the Settlement Class who did not timely and validly opt out. The Parties are directed to perform all obligations under the Settlement Agreement in accordance with its terms.

11. The Lawsuit is hereby dismissed with prejudice and without costs. This Judgment has been entered without any admission by any Party as to the merits of any allegation by any Party in the Lawsuit other than as already ruled in the record.

12. The Released Claims are hereby finally compromised, settled, released, discharged, and dismissed with prejudice against the Released Parties by virtue of the proceedings herein and this Final Judgment and Order of Dismissal.

13. All Class Members were given a full and fair opportunity to participate in the Final Approval Hearing, and all members of the Settlement Class wishing to be heard have been heard. Class Members also have had a full and fair opportunity to opt out from the proposed Settlement and the Class. Accordingly, the terms of the Settlement Agreement and of the Court's Order and Judgment shall be forever binding on all Class Members who did not timely opt out of the Settlement. These Class Members have released and forever discharged Defendant and all Released Parties from any and all Released Claims.

14. Members of the Settlement Class and their successors and assigns are hereby permanently barred and enjoined from asserting, commencing, prosecuting or continuing to

prosecute, either directly or indirectly, any Released Claim against any of the Released Parties in any forum.

15. The named Plaintiff is a suitable class representative and its appointment as representative for the Settlement Class is hereby re-confirmed. The Court approves an award of \$15,000 as a reasonable payment for its efforts, expenses and risks as Plaintiff in bringing the Lawsuit, which shall be paid from the Settlement Fund as provided in the Settlement Agreement.

16. Based upon the evidence submitted, the Court finds that John C. Whitfield and Caroline Ramsey Taylor of Whitfield, Bryson & Mason, LLP and George E. Stigger of the Law Offices of George E. Stigger have the requisite knowledge, experience, and skills to advance the interests of the Settlement Class. The Court hereby appoints all three attorneys as counsel for the Settlement Class. The Court approves an award of \$350,000 to Class Counsel as reasonable payment for Attorneys' Fees, Costs and Expenses, which shall be paid from the Settlement Fund as provided in the Settlement Agreement. It shall be solely up to Class Counsel to determine how to divide these fees and costs.

17. In addition, should there be funds left in the Settlement Fund following the payment of the attorneys fees and costs (as discussed in ¶16), incentive payment (as discussed in ¶15), and the principle and interest of all claims, Class Counsel shall be entitled to reimbursement of Settlement Administration costs up to \$35,000.00 from the remaining Settlement Fund which would have otherwise escheated to the state to account for the costs above what was budgeted for the settlement administration.

18. The following deadlines are imposed:

- a. Within fourteen (14) days after Final Judicial Approval, Defendant shall fund the Settlement Amount as directed by Class Counsel. Following the Funding

Deadline, court approved attorney fees, costs, expenses, and any incentive award may be immediately satisfied.

- b. The deadline for filing valid claims shall be August 22, 2020.
- c. The deadline to provide awards to Class Members shall be 60 days after the Claims Deadline or Final Approval, whichever is later.

19. Without affecting the finality of this judgment, the Court's retained jurisdiction of this Settlement also includes the administration and consummation of the Settlement. In addition, without affecting the finality of this judgment, the Court retains exclusive jurisdiction of, and the Parties and all Class Members are hereby deemed to have submitted irrevocably to the exclusive jurisdiction of this Court for, any suit, action, proceeding or dispute arising out of or relating to this Order and the Settlement Agreement, or the applicability of the Settlement Agreement. Without limiting the generality of the foregoing, any dispute concerning the Settlement Agreement, including, but not limited to, any suit, action, arbitration or other proceeding by a Class Member in which the provisions of the Settlement Agreement are asserted as a defense in whole or in part to any claim or cause of action or otherwise raised as an objection, shall constitute a suit, action or proceeding arising out of or relating to this Order. Solely for purposes of such suit, action or proceeding, to the fullest extent possible under applicable law, the Parties hereto and all persons within the definition of the Settlement Class are hereby deemed to have irrevocably waived and agreed not to assert, by way of motion, as a defense or otherwise, any claim or objection that they are not subject to the jurisdiction of this Court, or that this Court is, in any way, an improper venue or an inconvenient forum.

20. The Court finds that no just reason exists for delay in entering this Final Judgment and Order of Dismissal. Accordingly, the Clerk is hereby directed to enter this Final Judgment.

IT IS SO ORDERED.

Dated: July 27, 2020



Karen K. Caldwell
KAREN K. CALDWELL
UNITED STATES DISTRICT JUDGE
EASTERN DISTRICT OF KENTUCKY