UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA
ABINGDON DIVISION

EVA MAE ADKINS, on behalf of herself all others similarly situated,

Plaintiff,

v.

EQT PRODUCTION COMPANY; ACIN, LLC; ALPHA NATURAL RESOURCES, INC.; BLACK DIAMOND COAL COMPANY, LLC; BUCKHORN COAL CO., L.L.L.P.; CLINCHFIELD COAL COMPANY; HARRISON-WYATT, L.L.C; LAMBERT LAND, L.L.C.; LBR HOLDINGS, LLC; LEVISA COAL COMPANY; MOTIVATION COAL COMPANY; PARAMONT COAL CORPORATION; PYXIS RESOURCES COMPANY; RANGE RESOURCES-PINE MOUNTAIN, INC.; STANDARD BANNER COAL CORPORATION; and JOHN DOES A -Z,

Defendants.

Case No. _____

CLASS ACTION COMPLAINT

Trial By Jury Requested

Plaintiff, on behalf of herself and all others similarly situated, states as follows for her Complaint against the Defendants:

INTRODUCTION

1. This case is brought on behalf of certain owners and lessors of gas interests in Buchanan, Dickenson, Lee, Russell, Scott and Wise Counties, Virginia ("the Class"). Plaintiff and the Class Members are the owners of gas estates/interests in tracts that are included in coalbed methane gas drilling units operated by EQT Production Company ("EQT"); have each entered into one or more gas leases under which they leased their respective gas interests to EQT; and are entitled to receive from EQT royalty payments on all gas, including coalbed methane, produced by

EQT, their lessee.[1] Plaintiff and the Class Members have been identified by EQT -- in EQT's filings with the Virginia Gas and Oil Board ("Board") and/or in EQT's internal records -- as having claims to the ownership of coalbed methane gas ("CBM") that conflict with the CBM ownership claims that ostensibly arise from coal ownership in the tracts.

2. The Coal Owner Defendants listed in paragraphs 12-28, below, are the owners of purported CBM claims that arise from coal ownership in tracts that are included in CBM drilling units operated by EQT. Those entities (or their predecessors-in-interest) were identified by EQT in EQT's filings with the Board and/or in EQT's internal records as having claims to the ownership of CBM that conflict with the claims of the owners of the gas estates/interests in the tracts, including Plaintiff and the Class Members.

3. For years, EQT, as the operator of CBM wells/units located in the Subject Virginia Counties, has produced and sold substantial quantities of CBM that are attributable to Plaintiff's and the Class Members' gas ownership interests, but EQT has not made royalty payments to Plaintiff and the Class Members nor otherwise properly accounted for same.

4. EQT has deprived Plaintiff and the Class Members of their royalty payments by, *inter alia*, taking undue and/or unlawful advantage of certain provisions of the Virginia Gas and Oil Act, VA. CODE ANN. § 45.1-361-1, *et seq*. ("the Gas Act"), that permit the production and sale of CBM in the face of "conflicting claims" of CBM ownership. EQT repeatedly asserted that there were conflicting CBM ownership claims as between gas interest owners (including the Class Members) on the one hand, and coal interest owners (including the Coal Owner Defendants) on the other hand. EQT instituted proceedings before the Board under § 45.1-361.22 of the Gas Act that resulted in the entry of Board orders that force-pooled all interests or

[1] As used herein, "EQT" means EQT Production Company and its predecessors and predecessors-in-interest, including Equitable Production Company, Equitable Resources Energy Company, and Philadelphia Oil Company.

estates in CBM drilling units and appointed EQT as operator of the CBM units ("Force-Pooled CBM Units"). EQT thereupon proceeded to produce and sell CBM attributable to Plaintiff's and the Class Members' interests in the Force-Pooled CBM Units, but, because of EQT's assertions of "conflicting claims," EQT was obligated, under § 45.1-361.22, to place the royalty payments owed to Plaintiff and the Class Members under their leases into escrow, pending judicial resolution of the "conflicting claims" of CBM ownership. Such monies belong to but have never been paid to Plaintiff and the Class Members.

5. In addition, in most or all of those instances in which EQT had allegedly acquired gas/CBM leases from all of the gas owners and all of the coal owners in a potential drilling unit and thereby allegedly held 100% of the working interests in the potential unit, EQT did not undertake to have a Force-Pooled CBM Unit established through a Board-issued pooling order. Instead, EQT voluntarily pooled all of its gas ownership (leasehold) interests, established a voluntary (not force-pooled) drilling unit ("Voluntary CBM Unit"), drilled and operated a well or wells in the unit, and produced and sold CBM from the unit. In those instances in which EQT unilaterally determined, in its sole discretion, that there were "conflicting claims" of CBM ownership in a Voluntary CBM Unit as between a gas interest owner/lessor (including Plaintiff and certain Class Members) and a coal interest owner/lessor (including the Coal Owner Defendants), EQT did not make royalty payments to the conflicting claimants and did not pay into the Board's escrow account any of the royalty payments that were attributable to the conflicting ownership interests. Instead, EQT internally "suspended" all such royalty payments and kept all the royalties (monies) for its own use and benefit pending a judicial or other resolution of the EQT-declared "conflicting claims" of ownership. Upon information and belief, the suspended royalties were not segregated, deposited into, and held in an escrow or other

specially designated account, but were instead commingled with EQT's other monies and used by EQT for its own corporate purposes, with the amount of the "suspended" royalties presumably carried as a "liability" or "contingent liability" on EQT's financial books and records. Such monies belong to but have not been paid to Plaintiff and the Class Members.

6. EQT deprived Plaintiff and the Class Members of royalty payments owed to them under their leases by claiming that the Coal Owner Defendants own the CBM as a result of interests that arise from coal ownership.

7. EQT's claims and course of conduct are unfounded and contrary to the law. The Virginia Supreme Court held six years ago that CBM "is a distinct mineral estate" from coal, and that landowners retain the rights to CBM located on their property when they convey or lease coal rights. *Harrison-Wyatt, LLC v. Ratliff*, 593 S.E.2d 234, 238, 267 Va. 549, 556 (2004). A new state law codifies the *Ratliff* rule. VA. CODE ANN. § 45.1-361.21:1: "A conveyance, reservation, or exception of coal shall not be deemed to include coalbed methane gas." Therefore, controlling statutory and common law in Virginia holds that Plaintiff and the Class Members own the CBM that is produced from the lands in which they own gas interests, and that the Coal Owner Defendants do not own the CBM.

8. Plaintiff's and the Class Members' royalty payments are in (or are supposed to be in) an escrow account established by the Board. Under VA. CODE ANN. § 45.1-361.22(5)(a), Plaintiff and the Class Members will be entitled to receive their royalty payments from the Board's escrow account (and their royalties held by EQT "in suspense") upon the entry of a "final decision of a court of competent jurisdiction adjudicating the ownership of coalbed methane gas as between [the conflicting claimants]." Plaintiff respectfully requests that this Court make that ownership determination. The ownership determination would have substantial

benefits to Plaintiff and the Class Members, including entitling them to finally receive the many years' worth of their money that has been held in the Board's escrow account or retained by EQT as a result of ownership conflicts that do not exist.

9. On behalf of the Class, Plaintiff seeks a judgment establishing and directing, *inter alia*, that:

a. Plaintiff and the Class Members -- not the Coal Owner Defendants -- are the owners of the CBM that is attributable/allocated to those CBM Unit tracts as to which EQT has asserted there are conflicting claims of CBM ownership between Plaintiff and the Class Members (as gas interest owners/lessors) on the one hand, and the Coal Owner Defendants (as coal interest owners) on the other hand;

b. All royalty payments in the Board's escrow account that are attributable to Plaintiff's and the Class Members' CBM interests must be released from the Board's escrow account and paid over to Plaintiff and the Class Members;

c. All royalties attributable to Plaintiff's and the Class Members' CBM interests that were not deposited by EQT into the Board's escrow account but have been "suspended" or otherwise held by EQT and not paid to Plaintiff and the Class Members due to alleged conflicting claims of CBM ownership, must be paid by EQT to Plaintiff and the Class Members; and

d. EQT must fully account for the methodology it used to calculate Plaintiff's and the Class Members' CBM royalties (whether in the Board's escrow account or "in suspense"), must prove that it sold the CBM at the highest price obtainable and otherwise calculated the royalties properly, and must pay over to Plaintiff and the Class Members any royalty underpayments.

PARTIES

Plaintiff

10. Plaintiff, Eva Mae Adkins, is an adult resident citizen of the Commonwealth of Virginia. Plaintiff is the widow and sole heir and beneficiary of her late husband, Albert Curtis

Adkins. Plaintiff is the owner of certain lands and gas interests, including CBM, in Dickenson County, Virginia. Plaintiff, as lessor, has leased such gas interests to EQT, as lessee, pursuant to the following: (a) "Oil and Gas Lease" dated May 7, 1981 (appearing at Book 208, Pages 569-571 in the Clerk's Office of the Circuit Court of Dickenson County, Virginia ("the Clerk's Office")), attached hereto as Exhibit "A"; (b) "Oil and Gas Lease" dated July 20, 1990 (appearing in Book 268, Pages 344-347 in the Clerk's Office), attached hereto as Exhibit "B"; (c) "Oil and Gas Lease" dated May 19, 1992 (appearing at Book 285, Pages 09-12 in the Clerk's Office), attached hereto as Exhibit "C"; (d) "Ratification of Oil and Gas Lease" dated May 12, 2004 (appearing at Book 401, Pages 716-717 in the Clerk's Office), attached hereto as Exhibit "D"; and (e) "Oil and Gas Lease" dated May 16, 2005 (appearing at Book 413, Pages 552-555 in the Clerk's Office), attached hereto as Exhibit "E." Plaintiff does not assert in this action any individual claims she may have arising under, or in any way related to, that certain "Oil and Gas Lease" between Plaintiff and EQT Production Company dated October 27, 2009, and pertaining to lands (4.5 acres more or less) owned by Plaintiff in Wise County, Virginia; all such claims are expressly reserved.

EQT

11. Defendant EQT Production Company (formerly known as Equitable Production Company, as Equitable Resources Energy Company, and as Philadelphia Oil Company) is an out-of-state corporation organized under the laws of the State of Pennsylvania and has its principal office at 1710 Pennsylvania Avenue, Charleston, West Virginia 25302.

Coal Owner Defendants

12. Defendant ACIN, LLC is an out-of-state limited liability corporation organized under the laws of the State of Delaware and has its principal office at 1209 Orange Street, Wilmington, Delaware 19801.

13. Defendant Alpha Natural Resources, Inc. is an out-of-state corporation organized under the laws of the State of Delaware and has its principal office at One Alpha Place, Abingdon, Virginia 24210.

14. Defendant Black Diamond Coal Company, LLC (f/k/a Wellmore Coal Company, LLC) is a domestic limited liability corporation organized under the laws of the Commonwealth of Virginia and has its principal office at 110 Sprint Drive, Blountville, Tennessee 37617.

15. Defendant Buckhorn Coal Co., L.L.L.P. is a domestic limited liability corporation organized under the laws of the Commonwealth of Virginia and has its principal office at 312 West Main Street, Tazewell, Virginia 24651.

16. Defendant Clinchfield Coal Company ("Clinchfield") is a domestic corporation organized under the laws of the Commonwealth of Virginia and has its principal office at 16016 Porterfield Highway, Abingdon, Virginia.

17. Defendant Harrison-Wyatt, L.L.C. is a domestic limited liability corporation organized under the laws of the Commonwealth of Virginia and has its principal office at 2521 Riverside Drive, Danville, Virginia 24540.

18. Defendant Lambert Land, L.L.C. is a domestic limited liability corporation organized under the laws of the Commonwealth of Virginia and has its principal office at 20132 Judith Way, Abingdon, Virginia 24211.

19. Defendant LBR Holdings, LLC is a domestic limited liability corporation organized under the laws of the Commonwealth of Virginia and has its principal office at 450 Old Vine Street, 2nd Floor, Lexington, Kentucky 40522.

20. Defendant Levisa Coal Company is a domestic limited partnership organized under the laws of the Commonwealth of Virginia and has its principal office at 4710 Hunterwood Circle, Richmond, Texas 77469.

21. Defendant Motivation Coal Company is a domestic corporation organized under the laws of the Commonwealth of Virginia and has its principal office at 16016 Porter Field Highway, Abingdon, Virginia 24210.

22. Defendant Paramont Coal Corporation is an out-of-state corporation organized under the laws of the State of Delaware and has its principal office at 16016 Porter Field Highway, Abingdon, Virginia 24210.

23. Defendant Pyxis Resources Company ("Pyxis") is a domestic corporation organized under the laws of the Commonwealth of Virginia and has its principal office at 16016 Porterfield Highway, Abingdon, Virginia 24210.

24. Defendant Range Resources-Pine Mountain, Inc. ("Range-Pine") (f/k/a Pine Mountain Oil and Gas, Inc.) is an out-of-state corporation organized under the laws of the State of Delaware and has its principal office at 100 Throckmorton Street, Suite 1200, Fort Worth, Texas.

25. Defendant Standard Banner Coal Corporation is a domestic corporation organized under the laws of the Commonwealth of Virginia and has its principal office at 29059 Rivermont Drive, Meadowview, Virginia 24361-2847.

26. The defendants identified in Paragraphs 16, 23 and 24, above (Clinchfield, Pyxis, and Range-Pine), are those persons and entities who have been identified by EQT in its filings with the Board as coal estate/coal interest owners (or as owners of purported CBM interests that allegedly arise from coal ownership) that have "conflicting claims" with the Plaintiff in respect to the ownership of CBM produced from certain CBM Units operated by EQT.

27. The defendants identified in Paragraphs 12-15, 17-22, and 25, above, are those persons and entities who have, upon information and belief, been identified by EQT in its filings with the Board and/or in its internal records as coal estate/coal interest owners (or as owners of purported CBM interests that allegedly arise from coal ownership) that have "conflicting claims" with certain absent Class Member gas owners in respect to the ownership of CBM produced from CBM Units operated by EQT.

28. The "John Does A-Z" defendants are all other persons and entities who have been identified by EQT in its filings with the Board and/or in its internal records as coal estate/coal interest owners (or as owners of purported CBM interests that allegedly arise from coal ownership) that have "conflicting claims" with Plaintiff and/or absent Class Member gas owners in respect to the ownership of CBM produced from CBM Units operated by EQT. The complete identity of the John Doe defendants is currently unknown by Plaintiff, but the identity of those defendants is known by EQT, and Plaintiff will name them as specific parties defendant upon Plaintiff's receipt of the necessary information from EQT.

JURISDICTION

29. Plaintiff, individually and on behalf of the Class, seeks the issuance of a declaratory judgment pursuant to 28 U.S.C. § 2201(a). Plaintiff, individually and on behalf of the Class, also seeks injunctive relief and/or damages as a result of the matters described hereinafter.

30. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §1332(d)(2) because the aggregate amount in controversy exceeds $5,000,000, exclusive of interest and costs, and because one or more members of the Class are citizens of a State different from, *inter alia*, Defendant EQT Production Company. This Court also has supplemental jurisdiction over Plaintiff's claims under 28 U.S.C. §1367.

31. This Court has personal jurisdiction over Defendants because, *inter alia*, Defendants conduct business in the Commonwealth of Virginia, including, *inter alia*, producing gas in the Commonwealth of Virginia, and entering into agreements for the sale or lease of property and property rights located in the Commonwealth of Virginia.

32. Venue is proper in this Court pursuant to 28 U.S.C. §1391(a)(2) because a substantial part of the acts and transactions complained of herein occurred in this District, and pursuant to 28 U.S.C. §1391(a)(3) because Defendants are subject to personal jurisdiction at the time this action is commenced.

DEFINITIONS

33. The following definitions apply to this Complaint:

a. "Board" means the Virginia Gas and Oil Board.

b. "CBM" means coalbed methane gas.

c. "CBM Unit" is a CBM drilling unit in Virginia operated by EQT.

d. "Coal Owner Defendants" means the defendants identified in Paragraphs 12-28, above.

e. "DMME" means the Virginia Department of Mines, Minerals and Energy, including the Department's Division of Gas and Oil.

f. "EQT" means EQT Production Company and its predecessors and predecessors-in-interest, including Equitable Production Company, Equitable Resources Energy Company, and Philadelphia Oil Company.

g. "Including" means "including, without limitation."

h. "Leases" means all gas leases under which Plaintiff or any Class Member, as the lessor/royalty owner, and EQT, as the lessee/working interest owner, have both owned interests in respect to CBM wells located in any of the Subject Virginia Counties. The term "Leases" does not include any "lease" which has been "deemed" to be in effect under VA. CODE ANN. §45.1-361.22(6). The term "Leases" also does not include the October 27, 2009, Oil and Gas Lease between Plaintiff and EQT pertaining to lands in Wise County, Virginia, referenced in the last sentence of Paragraph 10, above.

i. "Subject Virginia Counties" means Buchanan, Dickenson, Lee, Russell, Scott, and Wise Counties, Virginia, and all other Virginia Counties in which EQT operates (or has operated) CBM well/units.

j. This action does not assert any claims Plaintiff and the Class Members may have for the underpayment of royalties on gas produced from conventional gas wells. All such claims are expressly reserved.

FACTUAL ALLEGATIONS

Background

34. This case concerns the ownership of CBM produced by EQT from certain CBM Units located in the Subject Virginia Counties.

35. Various persons and entities, including the Coal Owner Defendants or their predecessors-in-interest, hold the right to extract coal through coal mining operations in the Subject Virginia Counties. The coal owners mine and produce coal -- or hold the right to mine

and produce coal -- based upon their ownership of the coal and/or their leasehold rights to the coal.

36. CBM is a natural gas that resides in coal seams. Coal companies have historically ventilated or otherwise removed CBM from their coal mines as a safety measure, and discharged the CBM into the atmosphere. However, during the 1970's, technological advances made the commercial production and sale of CBM feasible, and CBM wells began to be drilled.

37. In 1990, the Virginia General Assembly enacted the Virginia Gas and Oil Act, VA. CODE ANN. §§ 45.1 - 361.1, *et seq*. (the "Gas Act"). When the Gas Act was enacted, there was uncertainty in Virginia about the legal question of whether CBM was owned by the owners of the gas estate/gas interests (e.g., landowners) or by coal estate/coal interest owners (e.g., coal companies). The Gas Act facilitated the drilling and production of CBM, without waiting for the CBM ownership issue to be judicially decided, by making it relatively easy for a company to force-pool and drill for CBM in a given area (a "unit"). The Gas Act required the operator of the drilled well to place all proceeds from the sale of CBM (less reasonable costs of production) attributable to "conflicting" CBM ownership interests into escrow until "a final decision of a court of competent jurisdiction adjudicating the ownership of coalbed methane gas as between [the conflicting claimants]." *See* VA. CODE ANN. §45.1-361.22(4) and (5).

38. EQT began producing and selling CBM from the Subject Virginia Counties in the 1990's. EQT's CBM operations are extensive. At the close of 2009, EQT operated more than 1,000 CBM wells in the Subject Virginia Counties, resulting in the production of millions of Mcf of CBM that was marketed and sold by EQT in 2009.

39. Some of the CBM Units operated by EQT were established by "force-pooling" orders issued by the Board under §45.1-361.22 of the Gas Act ("Force-Pooled CBM Units").

Each such pooling order describes a defined area of surface acreage; designates that area as a drilling unit on which a well (or wells) can be located, drilled and operated for the recovery of CBM; "force-pools" all of the gas estates/interests in the unit; and appoints EQT as the operator of the unit.

40. Other CBM Units operated by EQT include lands in which EQT had, prior to the establishment of the Unit, acquired gas/CBM leases from all of the owners and potential owners of CBM in the Unit, including from all of the owners of gas estates/gas interests in the Unit and all of the owners of coal estates/coal interests in the Unit. Such Units were not established by "force-pooling" orders issued by the Board but were established voluntarily by EQT, as the lessee of all the gas/CBM interests in the Unit and the owner of 100% of the working interests in the Unit. As to these "Voluntary CBM Units," EQT voluntarily pooled all of its gas ownership (leasehold) interests in the Unit and obtained permission from the DMME or the Board to drill, operate and produce a well or wells in the Unit.

41. In most instances, a CBM Unit is comprised of two or more separately owned tracts. The CBM produced by EQT from a CBM Unit is allocated among the separate tracts on a proportionate acreage basis, *i.e.*, the portion of CBM production allocated to a tract is in the same proportion which the tract's acreage bears to the total acreage in the CBM Unit. (For example, if a CBM Unit is 100 acres and is comprised of one tract (Tract 1) containing 60 acres, another tract (Tract 2) containing 30 acres, and another tract (Tract 3) containing 10 acres, then the CBM produced from the CBM Unit's well(s) would be allocated among the tracts as follows: Tract 1 – 60%; Tract 2 – 30%; and Tract 3 – 10%.) The CBM production allocated to a particular tract is shared among the tract's gas owners on a proportionate ownership basis.

42. Plaintiff and the Class Members are the owners of gas estates/interests in tracts that are included in CBM drilling units operated by EQT. Plaintiff and the Class Members have entered into one or more Leases under which they leased their respective gas interests to EQT and are entitled to receive from EQT royalty payments on gas, including CBM, produced by EQT, their lessee.

43. CBM is defined by the Gas Act as "occluded natural gas produced from coalbeds and rock strata associated therewith." VA. CODE ANN. §45.1-361.1. As noted above, when the Gas Act was passed there was uncertainty in Virginia about whether CBM allocated to a CBM Unit tract was owned by (a) the persons and entities owning the gas estate/gas interests in that tract ("gas owners"), or (b) the persons and entities owning the coal estate/coal interests in that tract ("coal owners"). However, the Virginia Supreme Court addressed and answered the question on March 5, 2004. *Harrison-Wyatt v. Ratliff*, 593 S.E.2d 234 (Va. 2004) (title to CBM does not pass to coal owner along with the coal).

EQT's Force-Pooled CBM Units

44. Beginning in the 1990's, when making an application to the Board for a CBM Unit to be established and for interests in the CBM Unit to be "force-pooled," EQT -- as the proposed operator -- undertook to (and was obligated under § 45.1-361.22 of the Gas Act to) identify those tracts in which there were conflicting claims to the ownership of CBM, and to provide lists/schedules that identified the conflicting claimants/potential owners.

45. When EQT submitted its applications to the Board for Force-Pooled CBM Units and made subsequent filings as the Board-appointed operator of the Force-Pooled CBM Units, EQT consistently advised and represented to the Board that conflicting claims to the ownership of CBM existed for each of those tracts in which one person or entity owned the gas estate/gas

interests ("gas owner") and a different person or entity owned the coal estate/coal interests ("coal owner"). The conflicting claims allegedly arose from the question of whether the CBM allocable to that tract was owned by the gas owner(s) or by the coal owner(s).

46. As to the Force-Pooled CBM Units, EQT provided the Board with lists/schedules that identified the "conflicting claimants," including the name of each gas owner and the name of each coal owner, and attested and represented to the Board that its lists/schedules were accurate. The pooling orders issued by the Board for the Force-Pooled CBM Units operated by EQT consistently adopted (apparently "rubber-stamped") EQT's assertions of "conflicting claims" of CBM ownership.

47. EQT undertook, as the operator of the Force-Pooled CBM Units, to produce CBM from the CBM Units; and EQT undertook, as the operator and/or as a participating working interest owner, to take possession of and sell the CBM it produced from the CBM Units. The CBM sales proceeds attributable to "conflicting interests," including royalty payments owed by EQT to Plaintiff and the Class Members under their Leases, were (or were supposed to have been, but have not been) deposited by EQT into a Board-established escrow account per the provisions of VA. CODE ANN. §45.1-361.22(4). To release the escrowed monies, § 45.1-361.22(5) of the Gas Act provides that "[t]he Board shall order payment of principal and accrued interest, less escrow account fees, from the escrow account to conflicting claimants . . . after (i) a final decision of a court of competent jurisdiction adjudicating the ownership of coalbed methane gas as between them. . . ."

EQT's Voluntary CBM Units

48. In most or all of those instances in which EQT had allegedly acquired gas/CBM leases from all of the gas owners and all of the coal owners in a potential drilling unit and

thereby allegedly held 100% of the working interests in the potential unit, EQT did not undertake to have a Force-Pooled CBM Unit established through a Board-issued pooling order. Instead EQT voluntarily pooled all of its gas ownership (leasehold) interests, established a voluntary (not force-pooled) drilling unit ("Voluntary CBM Unit"), drilled and operated a DMME-permitted well or wells in the unit, and produced and sold CBM from the unit. In those instances in which EQT determined, in its discretion, that there were "conflicting claims" of CBM ownership in a Voluntary CBM Unit as between a gas interest owner/lessor (including Plaintiff and certain Class Members) and a coal interest owner/lessor (including the Coal Owner Defendants), EQT did not make royalty payments to the conflicting claimants and did not pay into the Board's escrow account any of the royalty payments that were attributable to the conflicting ownership interests. Instead, EQT internally "suspended" all such royalty payments and kept the royalties (monies) for its own use and benefit pending a judicial or other resolution of the EQT-declared "conflicting claims" of ownership. Upon information and belief, the suspended royalties were not segregated, deposited into, and held in an escrow or other specially designated account, but were instead commingled with EQT's other monies and used by EQT for its own corporate purposes, with the amount of the "suspended" royalties presumably carried as a "liability" or "contingent liability" on EQT's financial books and records. Such monies belong to but have not been paid to Plaintiff and the Class Members. In addition to paying the principal amount of such royalties to Plaintiff and the Class Members and prejudgment interest thereon at the maximum lawful rate, EQT should be required to disgorge all ill-gotten gains EQT realized through its wrongful use of such royalties, including equitable interest on such royalties calculated at a rate equal to EQT's return on equity for its Virginia operations during each of the years in question (which returns are believed to approach or exceed 20%), and including the value of all other

monetary or other economic advantages, profits, and benefits EQT realized through its use of such royalties.

Determination of Ownership

49. Plaintiff and the Class Members are the persons and entities who have been identified by EQT in its Board filings (as to Force-Pooled CBM Units) or in its internal records (as to Voluntary CBM Units) as the owners of the gas estates/gas interests in a CBM Unit tract who have leased their interests (to EQT), but whose ownership of the CBM allocated to that tract has been further identified by EQT as being in conflict with the persons and entities who own CBM claims that arise from coal ownership in the tract. The Coal Owner Defendants are the persons and entities who have been identified by EQT in its Board filings or in its internal records as the owners of the coal estates/interests (or as owners of purported CBM interests that allegedly arise from coal ownership) in the relevant CBM Unit tracts, and who -- according to EQT -- have claims to the ownership of CBM that conflict with Plaintiff and the Class Members, who own the gas estates/interests in the tracts. The royalty payments owed by EQT to Plaintiff and the Class Members have not been released from escrow or suspense or otherwise paid over to Plaintiff and the Class Members.

50. Through this action, Plaintiff requests, on behalf of herself and the Class, that the Court enter a judgment declaring, as between the "conflicting claimants" identified by EQT, that as a matter of law the CBM allocated to the subject CBM Unit tracts is owned by Plaintiff and the Class Members (the gas interest owners/lessors) and is not owned by the Coal Owner Defendants (the coal interest owners and other owners of purported CBM interests that allegedly arise from coal ownership). Such a determination is a straightforward legal issue, given the Virginia Supreme Court's decision in *Harrison-Wyatt, LLC v. Ratliff*, 593 S.E.2d 234, 238, 267

Va. 549, 556 (2004) (coalbed methane gas "is a distinct mineral estate" from coal, and landowners (gas owners) retain the rights to CBM when they convey or lease coal rights), and the very recent addition of §45.1-361.21:1 to the Gas Act which provides that: "A conveyance, reservation, or exception of coal shall not be deemed to include coalbed methane gas."

51. The Board does not (as EQT and the Board agree) have the authority to make an adjudication of the ownership of CBM as between "conflicting claimants." *See* VA. CODE ANN. §45.1-361.22(5).

52. Plaintiff respectfully asks this Court to apply *Ratliff* and §45.1-361.21:1 and make an adjudication of CBM ownership in favor of Plaintiff and the Class Members and against the Coal Owner Defendants.

53. Plaintiff further requests that this Court enter a judgment declaring that Plaintiff and the Class Members are, as to the past production of CBM by EQT, entitled to receive from the Board's escrow account and/or from EQT directly, all royalty payments attributable to their interests. The Court should also direct EQT and/or the Coal Owner Defendants to instruct and otherwise authorize the Board to release such royalty payments from the Board's escrow account, plus all interest accrued (or which could or should have accrued) thereon, and pay such monies over to Plaintiff and the Class Members; and the Court should direct EQT to release and pay over to Plaintiff and the Class Members all royalties attributable to their respective interests that were placed "in suspense" or otherwise retained by EQT and withheld from Plaintiff and the Class Members, plus prejudgment and equitable interest thereon. In addition, Plaintiff requests that this Court enter a judgment declaring that Plaintiff and the Class Members are, as to future production, entitled to receive royalty payments directly from EQT in accordance with their

Leases and that EQT shall not deposit any such royalty payments into the Board's escrow account nor hold any such payments "in suspense."

EQT's Escrow Account Obligations

54. EQT took possession of and sold the CBM Unit production attributable to the leasehold interests it obtained from the Class Members under the Leases.

55. To the extent EQT has deposited into the Board's escrow account royalty payments attributable to Plaintiff's and the Class Members' interests under the Leases, EQT should be required, via the entry of a judgment, to instruct and otherwise authorize the Board to release such escrowed royalty payments to Plaintiff and the Class Members, including all escrow account interest accrued thereon. In addition, to the extent EQT has failed to properly deposit royalty payments into the Board's escrow account, EQT should be required, via the entry of a judgment, to pay to Plaintiff and the Class Members an amount of money equal to the total amount of royalty payments EQT should have deposited, but failed to deposit, plus prejudgment and equitable interest thereon, and plus the value of any monetary or other economic advantages, profits, and benefits, including attendant tax credits, that EQT realized through its receipt, retention and use of the royalties EQT failed to deposit.

56. To the extent EQT has held "in suspense" or otherwise retained royalties attributable to Plaintiff's and the Class Members' interests, EQT should be required, via the entry of a judgment, to pay to Plaintiff and the Class Members an amount of money equal to the total amount of such royalties, plus prejudgment and equitable interest thereon, and plus the value of any monetary or other economic advantages, profits, and benefits, including attendant tax credits, that EQT realized through its receipt, retention and use of such royalties.

57. Plaintiff alleges that the royalty payments deposited by EQT into the Board's escrow account and the royalties "suspended" or otherwise retained by EQT, were calculated improperly and were insufficient. For example, in marketing the CBM it produced, EQT was obligated, as the lessee under the Leases and/or as the CBM Unit operator, to act as a reasonably prudent operator and to market and sell the CBM at the highest price obtainable. However, in calculating Plaintiff's and the Class Members' royalties, EQT has improperly used gas prices that were less than the highest price obtainable, including prices from the sale of gas by EQT to affiliates on a non-arm's length basis. Further, in calculating Plaintiff's and the Class Members' royalties, EQT has not calculated royalties on all of the volumes of CBM it produced, and EQT has deducted post-wellhead costs that were improper and/or excessive, including costs that were incurred by EQT to make the CBM marketable and/or costs that were in excess of actual, direct, and/or reasonable costs. In addition, EQT has made deductions from Plaintiff's and the Class Members' royalties for severance (license) and other taxes and deducted such taxes from the royalties based on a percentage of gross revenues/values. EQT has, however, remitted taxes to the applicable governmental authorities based on a percentage of net revenues/values (i.e., gross revenues/values minus certain post-wellhead costs), and EQT has, through such a scheme, wrongfully and improperly obtained and retained a portion of Plaintiff's and the Class Members' royalties for its own use and benefit.

58. Plaintiff and the Class Members demand and are entitled to receive a full and accurate disclosure and an accounting of all such matters from which the full extent of EQT's wrongful acts and omissions and Plaintiff's and the Class Members' resulting damages may be revealed.

59. The full extent of EQT's acts and omissions in regard to its payments (or non-payments) of Lease royalties is not currently known, and can only be determined adequately through an accounting and investigation of EQT's books, records, and practices, including, without limitation, disclosure of detailed information relating to the handling and marketing of CBM produced by EQT and all other matters relating to EQT's calculation of its Lease royalty payments and obligations.

60. Plaintiff and the Class Members are entitled to recover from EQT all amounts that are shown to be owed by EQT as the result of such accounting, including prejudgment and equitable interest thereon at the maximum lawful rate.

PUNITIVE DAMAGES

61. The acts and omissions of EQT as set forth hereinabove were willful and wanton and in utter disregard of the rights of Plaintiff and the Class Members, or were done with reckless disregard for their rights, thus entitling Plaintiff and the Class Members to punitive damages against EQT in an amount to be determined by the jury.

SPECIAL MASTER

62. Plaintiff requests that the Court consider the appointment of a master under Rule 53, FED. R. CIV. P., to assist the Court in the resolution of the accounting issues due to be resolved through this action, with all such costs for same, including the master's compensation, to be paid by EQT.

CLASS ACTION ALLEGATIONS

63. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Plaintiff brings this action on behalf of herself and the Class, defined as follows:

> Each person and entity who has been identified by EQT as the owner and lessor of the gas estate or gas interests in a tract included in a coalbed methane gas unit operated by EQT in any of

> the Subject Virginia Counties, and whose ownership of the coalbed methane gas attributable to that tract has been further identified by EQT as being in conflict with a person(s) or entity(ies) owning the coal estate or coal interests in the tract. The Class excludes (a) the Defendants, and (b) any person who serves as a judge in this civil action and his/her spouse.

64. Plaintiff reserves the right to redefine the Class and/or establish subclasses as may be appropriate.

65. The members of the Class are so numerous that joinder of all members is impractical. Disposition of the claims in this action will provide substantial benefits to both the parties and the Court.

66. Although the precise number and identity of the Class Members can be ascertained from the books and records of Defendants, Plaintiff alleges, upon information and belief, that the Class exceeds 100 members.

67. There are questions of law and/or fact common to the Class that predominate over any questions that affect only individual Class Members. These questions include, but are not limited to, the following:

a. Whether as a matter of law Plaintiff and the Class Members own the CBM that is attributable to the CBM Unit tracts in which they own gas estates/gas interests;

b. Whether as a matter of law a conveyance, reservation, or exception of coal does not include CBM;

c. Whether EQT has failed to account and/or properly account to Plaintiff and the Class Members for royalties owed to Plaintiff and the Class Members under the Leases;

d. Whether EQT's accounting methodology for the production of CBM from the Subject Virginia Counties, including its calculation of production proceeds attributable thereto, was the same for all Class Members;

e. Whether EQT used the same methodology and underlying records to calculate all Class Members' royalty payments;

f. Whether EQT used for all Class Members the same gas prices (per MCF and/or per MMBtu) to calculate their royalty payments on CBM produced by EQT, and the transactions upon which those gas prices were based;

g. Whether the gas prices used by EQT to calculate royalty payments for Plaintiff and the Class Members under the Leases were less than the best gas prices obtainable for such CBM;

h. Whether the gas volumes used by EQT to calculate its royalty payments were less than the gas volumes that were produced and/or sold by EQT;

i. Whether EQT failed to pay royalties on gas that was lost, used, and/or consumed by EQT or third parties, including gas that was used (as fuel) to operate post-wellhead facilities;

j. Whether costs were deducted and what kinds of costs were deducted by EQT in calculating royalty payments for Plaintiff and the Class Members under the Leases;

k. Whether the costs deducted by EQT in calculating royalty payments for Plaintiff and the Class Members under the Leases were improper and/or excessive;

l. Whether EQT has converted Plaintiff's and the Class Members' Lease royalties by, *inter alia*, retaining such royalties for its own use and benefit;

m. Whether EQT has violated its duty to properly account to Plaintiff and the Class Members on CBM produced in the Subject Virginia Counties as a result of the acts and omissions described herein; and

n. Whether punitive damages can and should be imposed on EQT by virtue of EQT's wrongful acts and omissions.

68. EQT has acted on grounds that apply generally to Plaintiff and all Class Members, so that declaratory and injunctive relief is necessary and appropriate for the Class as a whole, consistent with Rule 23(b)(2) of the Federal Rules of Civil Procedure.

69. The critical remedy that Plaintiff seeks -- a final legal determination of CBM ownership -- is primarily declaratory and injunctive. The monetary relief that Plaintiff seeks is secondary to, and flows from, the declaratory/injunctive request.

70. The common pattern of conduct by Defendants (along with the common theories for redressing the misconduct) supports the maintenance of this action as a class action pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure.

71. Plaintiff and the Class Members share a well-defined community of interest; many common questions of law and fact are common to Plaintiff and all Class Members.

72. Plaintiff's claims are typical of the claims of the Class, and Plaintiff has the same interests as the other members of the Class.

73. Plaintiff is an adequate representative of the Class and will fairly and adequately protect the interests of the Class.

74. Plaintiff is committed to prosecuting this action and has retained experienced and competent counsel. Plaintiff's counsel are experienced in class actions, including actions that involve breaches of oil and gas leases, and underpayments of gas royalties. Neither Plaintiff nor Plaintiff's counsel have any interests that might cause them not to vigorously pursue this action.

75. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Absent a class action, many members of the Class will find the

litigation costs regarding their claims so prohibitive that they effectively would be unable to seek any redress at law. Because of the size of the individual Class Members' claims, many could not afford to seek legal redress or the relief requested for the wrongs set forth herein. Absent a class action, Defendants will continue the improper and wrongful conduct herein described, the Class Members will continue to be damaged by Defendants' wrongful conduct, and Defendants' violations of the law will continue without remedy.

COUNT I

DECLARATORY JUDGMENT

76. Plaintiff restates and incorporates herein by reference all of the allegations contained in the above numbered paragraphs.

77. Plaintiff requests that the Court issue a judgment pursuant to 28 U.S.C. §2201, and declare and direct that:

a. Plaintiff and the Class Members -- not the Coal Owner Defendants -- are the owners of the CBM that is attributable/allocated to those CBM Unit tracts as to which EQT has asserted there are conflicting claims of CBM ownership between Plaintiff and the Class Members (as gas interest owners/lessors) on the one hand, and the Coal Owner Defendants (as coal interest owners) on the other hand;

b. All royalty payments in the Board's escrow account that are attributable to Plaintiff's and the Class Members' CBM interests must be released from the Board's escrow account and paid over to Plaintiff and the Class Members;

c. All royalties attributable to Plaintiff's and the Class Members' CBM interests that were not deposited by EQT into the Board's escrow account but have been "suspended" or otherwise held by EQT and not paid to Plaintiff and the Class Members due to alleged conflicting claims of CBM ownership, must be paid by EQT to Plaintiff and the Class Members; and

d. EQT must fully account for the methodology it used to calculate Plaintiff's and the Class Members' CBM royalties (whether in the Board's escrow account or "in suspense"), must prove that it sold the CBM at the highest price obtainable and otherwise calculated the royalties properly, and must pay over to Plaintiff and the Class Members any royalty underpayments.

COUNT II

BREACH OF CONTRACT

78. Plaintiff restates and incorporates herein by reference all of the allegations contained in the above-numbered paragraphs.

79. The above-described conduct constitutes violations and breaches of the obligations, expressed and/or implied, which EQT owes to Plaintiff and the Class Members under their Leases.

80. Plaintiff and the Class Members have been damaged as a result thereof and are entitled to recover their actual damages from EQT, statutory or other interest at the maximum lawful rate, and any and all other relief deemed appropriate by the Court.

COUNT III

CONVERSION

81. Plaintiff restates and incorporates herein by reference all of the allegations contained in the above-numbered paragraphs.

82. EQT, as the Board-appointed operator of the CBM Units and/or as the lessee under the Leases, had the lawful authority to produce the CBM that was attributable to Plaintiff's and the Class Members' interests. However, once the CBM was produced, EQT was obligated to properly sell the CBM and remit Lease royalties for same to Plaintiff and the Class Members. EQT failed to do this, and instead took wrongful possession of and retained Lease royalties for its own account, use, and benefit.

83. EQT's conduct constitutes an unlawful conversion of the royalties that are attributable to the Plaintiff's and Class Members' interests under the Leases. Plaintiff and the Class Members are entitled to receive from EQT an amount of money equal to the Lease royalties converted by EQT.

84. Plaintiff and the Class Members have been damaged as a proximate result thereof and are entitled to recover their actual damages from EQT, statutory, equitable or other prejudgment interest at the maximum lawful rate, punitive damages, and any and all other relief deemed appropriate by the Court.

COUNT IV

NEGLIGENCE: VOLUNTARY UNDERTAKING

85. Plaintiff restates and incorporates herein by reference all of the allegations contained in the above-numbered paragraphs.

86. EQT voluntarily undertook to submit applications to the Board for the creation of Force-Pooled CBM Units and voluntarily undertook to create Voluntary CBM Units, and EQT thereby also voluntarily undertook the tasks of identifying the persons and entities owning an interest in the proposed units and identifying any conflicting CBM ownership claims therein. EQT recognized, or should have recognized, that the proper identification of owners and ownership interests was necessary for the protection of those persons and entities actually owning interests in the CBM that was going to be produced from the CBM Unit. As a matter of law, EQT's undertaking imposed upon EQT a duty to exercise reasonable care in the discharge of its undertaking.

87. On March 5, 2004, the Virginia Supreme Court issued its ruling in *Ratliff* and thereby established that, as between the owner of the gas estate/gas interests on the one hand, and the owner of the coal estate/coal interests on the other hand, CBM is owned by the owner of the

gas estate/gas interests. After March 5, 2004, and notwithstanding the Supreme Court's decision in *Ratliff*, EQT continued to make applications to the Board for the establishment of Force-Pooled CBM Units and continued to establish Voluntary CBM Units, and in connection therewith failed to exercise reasonable care with regard to its identification of the persons and entities owning interests in the CBM.

88. Among other things, EQT improperly ignored the holding of *Ratliff*; improperly asserted that conflicting CBM ownership claims existed between gas owners and coal owners; improperly procured the Board's entry of pooling orders which adopted (false) assertions of conflicting CBM ownership claims as between gas owners and coal owners; and improperly caused royalty payments owed to the true CBM owners -- the gas owners -- to be held in the Board's escrow account or to be held by EQT "in suspense," thereby depriving Plaintiff and the Class Members of the Lease royalties to which they were entitled. Further, after the Virginia Supreme Court's March 5, 2004, opinion in *Ratliff*, EQT, as the operator of CBM Units established prior to March 5, 2004, should have filed, but failed to file, supplemental and corrected ownership and revenue distribution schedules with the Board in regard to those Force-Pooled CBM Units that had been established prior to March 5, 2004; and should have corrected its internal ownership and revenue distribution schedules in regard to those Voluntary CBM Units that had been established prior to March 5, 2004. EQT should have withdrawn its prior ownership and revenue distribution schedules in which gas owners and coal owners had been categorized incorrectly as "conflicting claimants," and should have prepared and/or submitted amended ownership and revenue distribution schedules reflecting, consistent with *Ratliff*, that the gas owners -- not the coal owners -- were the true CBM owners. EQT could and should have thereby caused Lease royalties attributable to past production to be released to the gas owners,

including Plaintiff and the Class Members, and/or caused Lease royalties attributable to future production to be paid to the gas owners, including Plaintiff and the Class Members, instead of being placed into the Board's escrow account and/or held by EQT "in suspense."

89. Such acts and omissions constitute a failure by EQT to exercise reasonable care in the performance of its undertakings, and constitute actionable negligence. Further, EQT's acts and omissions in this regard constitute gross negligence and willful, wanton misconduct.

90. Plaintiff and the Class Members have been damaged as a proximate result thereof and are entitled to recover their actual damages from EQT, statutory, equitable, or other prejudgment interest at the maximum lawful rate, punitive damages, and any and all other relief deemed appropriate by the Court.

COUNT V

NEGLIGENCE: DUTIES AS UNIT OPERATOR

91. Plaintiff restates and incorporates herein by reference all of the allegations contained in the above-numbered paragraphs.

92. EQT owed Plaintiff and the Class Members certain obligations resulting from duties that are implied and imposed by law on lessees and/or on operators of force-pooled or voluntary units, including the duty to act as a reasonably prudent operator and the duty to market.

93. The above-described conduct by EQT constitutes violations and breaches of EQT's duty to act as a reasonably prudent operator and EQT's duty to market.

94. Plaintiff and the Class Members have been damaged as a proximate result thereof and are entitled to recover their actual damages from EQT, statutory, equitable, or other prejudgment interest at the maximum lawful rate, punitive damages, and any and all other relief deemed appropriate by the Court.

COUNT VI

BREACH OF FIDUCIARY DUTIES

95. Plaintiff restates and incorporates herein by reference all of the allegations contained in the above-numbered paragraphs.

96. Fiduciary duties and responsibilities were owed by EQT to Plaintiff and the Class Members by virtue of (a) EQT's status as the lessee under the Leases and/or as the operator of CBM Units created voluntarily by EQT or through compulsory/forced pooling; (b) EQT's control over and handling, as unit operator, of CBM production and sales proceeds for the benefit of persons owning interests in the CBM Units operated by EQT, including Plaintiff and the Class Members; and/or (c) EQT's undertakings to act as agent and/or joint venturer for, or for the benefit of, other interest owners in the CBM Units operated by EQT, including Plaintiff and the Class Members, in regard to the production, marketing and sale of CBM produced from the CBM Units and in regard to the accounting and revenue distribution functions related thereto. By virtue of such fiduciary duties and responsibilities, EQT had an affirmative duty to correctly identify the interest owners in the CBM Unit; calculate and pay the true and correct amount of monies due to the interest owners, including Plaintiff and the Class Members; account for all of the CBM produced and sold by EQT; and fully and accurately report and disclose all material information relating to EQT's calculation of its payments.

97. EQT's acts and omissions as above-described constitute violations and breaches of the fiduciary duties owed by EQT to Plaintiff and the Class Members.

98. Plaintiff and the Class Members have been damaged as a proximate result thereof and are entitled to recover their actual damages from EQT, statutory, equitable, or other prejudgment interest at the maximum lawful rate, punitive damages, and any and all other relief deemed appropriate by the Court.

COUNT VII

UNJUST ENRICHMENT

99. Plaintiff restates and incorporates herein by reference all the allegations contained in the above-numbered paragraphs.

100. Benefits attributable to Plaintiff's and the Class Members' CBM ownership interests, including CBM production volumes, sales proceeds, attendant tax credits, Lease and/or other benefits, were conferred on EQT by Plaintiff and the Class Members. EQT knew of such benefits and should reasonably have expected to pay Plaintiff and the Class Members for same. EQT accepted and retained such benefits without paying Plaintiff and the Class Members for the value of the benefits, and accepted and retained such benefits under circumstances that render it inequitable for EQT to retain the benefits without paying Plaintiff and the Class Members for the value of same.

101. Plaintiff and the Class Members are entitled to recover the value of the benefits attributable to Plaintiff's and the Class Members' ownership interests that were accepted and retained improperly by EQT, statutory, equitable, or other prejudgment interest at the maximum lawful rate, punitive damages, and any and all other relief deemed appropriate by the Court.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully demands as follows on behalf of herself and the Class:

1. That a class be certified by the Court as soon as practicable, and that this action proceed as a class action with Plaintiff serving as Class Representative for the Class and with counsel for Plaintiff serving as Class Counsel;

2. That the Court enter a judgment declaring the respective rights and obligations of the parties as described and requested above;

3. That the Court award injunctive relief requiring EQT to properly account to Plaintiff and the Class Members as described and requested above;

4. That Plaintiff and the members of the Class recover full compensatory damages from EQT in respect to the claims asserted against EQT, and that EQT disgorge and pay over to Plaintiff and the members of the Class all of EQT's ill-gotten gains as described and requested above;

5. That Plaintiff and the members of the Class recover punitive damages against EQT as determined by a jury;

6. That Plaintiff and the Class Members recover from EQT pre-judgment, post-judgment, and equitable interest on all amounts awarded hereunder;

7. That this Honorable Court grant Plaintiff and the Class Members all additional relief as may be just and proper and to which the Plaintiff and the members of the Class may be entitled; and

8. That Plaintiff and the Class Members be given a trial by jury.

Respectfully submitted,

Dated: April 20, 2011

EVA MAE ADKINS

By: /s/ Peter G. Glubiak .

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