

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA
ABINGDON DIVISION

EDWIN F. LEGARD, JR.; ELIZABETH ANNE)
COX TRUST, by and through its Trustee,)
Elizabeth Anne Cox; and EMILY P. BAKER)
GENERATION SKIPPING TRUST, by and)
through its Trustee, William G. Baker, Jr., on)
behalf of themselves and all others similarly)
situated,)

Plaintiffs,)

v.)

EQT CORPORATION and EQT PRODUCTION)
COMPANY,)

Defendants.)

Case No. _____

CLASS ACTION COMPLAINT

Trial by Jury Requested

Plaintiffs, on behalf of themselves and all others similarly situated, state as follows for their Complaint against Defendants, EQT Corporation and EQT Production Company:

I. PARTIES

1. Plaintiff Edwin F. Legard, Jr. is an adult resident citizen of the State of Connecticut.
2. Plaintiff Elizabeth Anne Cox Trust (“Cox Trust”) is a trust formed and existing under the laws of the State of Connecticut. Elizabeth Anne Cox is the duly-appointed Trustee of the Cox Trust and is an adult resident citizen of the State of Connecticut.
3. Plaintiff Emily P. Baker Generation Skipping Trust (“Baker Trust”) is a trust formed and existing under the laws of the State of Oregon. William G. Baker, Jr. is the duly-appointed Trustee of the Baker Trust and is an adult resident citizen of the State of Oregon.
4. Plaintiffs own lands and gas interests in Dickenson County, Virginia, and are

entitled as lessors to receive gas lease royalty payments from Defendants on gas produced by Defendants from Plaintiffs' Dickenson County properties.

5. Defendant EQT Corporation (formerly known as Equitable Resources, Inc.) is an out-of-state corporation organized under the laws of the State of Pennsylvania and has its principal office at 625 Liberty Avenue, Pittsburgh, Pennsylvania 15222.

6. Defendant EQT Production Company (formerly known as Equitable Production Company) is a subsidiary of EQT Corporation. EQT Production 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.

7. EQT Corporation and EQT Production Company will sometimes hereinafter be referred to collectively as "EQT."

II. JURISDICTION

8. Plaintiffs, individually and on behalf of the Class, seek to recover damages and declaratory and/or injunctive relief as a result of EQT's improper calculation and payment of Royalties as more fully described hereinafter.

9. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §1332(d) 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 the Defendants.

10. This Court has personal jurisdiction over Defendants because 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 of property and property

rights in the Commonwealth of Virginia.

11. 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 the Defendants are subject to personal jurisdiction at the time this action is commenced.

III. DEFINITIONS

12. The following definitions apply to this Complaint:

a. “Gas” means natural gas and/or associated liquid hydrocarbons, but does not include oil, condensate or other liquid hydrocarbons recovered by mechanical separators at or near the wellhead.

b. “Leases” means all documents under which any Class Member and either of the Defendants have both owned interests in oil and gas wells or mineral rights located in the Subject Virginia Counties, including leases, assignments of leases that convey or reserve overriding royalty interests therein, and other documents conveying or reserving royalty or overriding royalty interests in such wells or mineral rights. The term “Leases” does not include pooling orders issued by the Virginia Gas and Oil Board pursuant to the Virginia Gas and Oil Act of 1990 under which unleased mineral owners have been “deemed” to have leased their gas interests to the gas well operator.

c. “Royalty” means royalty and overriding royalty interests in Gas.

d. “Subject Virginia Counties” means Buchanan, Dickenson, Lee, Russell, Scott, and Wise Counties, Virginia, and all other Virginia Counties in which EQT Production Company operates (or has operated) Gas wells/units.

IV. FACTUAL ALLEGATIONS

13. Plaintiffs and the Class Members are owed and have received Royalties from EQT under Leases in the Subject Virginia Counties from which Gas has been produced by EQT. EQT is responsible for the proper determination, calculation, distribution, and payment of Royalties due and owing to Plaintiffs and the Class Members on Gas produced by EQT.

14. Through the practices, acts and omissions described herein, EQT has failed to pay the true Royalties owed to Plaintiffs and the Class Members, and Plaintiffs and the Class Members have been and continue to be damaged in an amount to be proven at trial.

15. Based on the implied duty to market and/or the duty to act as a reasonable prudent operator, which duties are imposed on EQT as a matter of law, EQT is obligated to market and sell its Gas production at the highest price obtainable. In calculating and making its Royalty payments to Plaintiffs and the Class Members, EQT has, upon information and belief, improperly used gas prices that were less than fair market value prices. EQT's use of such improper prices resulted from, among other things, the sale of Gas by EQT to affiliates, including EQT Midstream and/or EQT Energy, on a non-arm's length basis.

16. Based on the implied duty to market, which is part of the Plaintiffs' and Class Members' Leases and imposed on EQT as a matter of law, EQT is obligated to market the Gas produced from the Leases at no cost to Plaintiffs and the Class Members. EQT must, among other things, place the Gas in a marketable condition, and transport the Gas to the point of sale; and must bear all of the costs for same. The Leases do not expressly state that these costs may be deducted from Royalty payments.

17. In violation of its duty to market, EQT has improperly taken deductions from Plaintiffs' and Class Members' Royalties for various post-wellhead costs. Such costs include fees, expenses, and charges for gathering, compression, dehydration, treating, separation, processing and/or transportation to the point of sale. Such costs also include those volumes of Gas that were used (as fuel) to operate post-wellhead facilities or that were lost or otherwise unaccounted for by the providers of post-wellhead facilities and services. EQT has charged such costs to Plaintiffs and the Class Members by deducting the costs, directly or indirectly, when calculating its Royalty payments and by failing to pay Royalties on the volumes of Gas that were used, lost, or unaccounted for by the providers of post-wellhead facilities and services.

18. EQT has also, upon information and belief, sold Gas in an unmarketable condition to affiliates or third parties, who (a) perform the activities that are necessary to place the Gas in a marketable condition, and (b) then sell the Gas in a marketable condition at an increased price (e.g., at fair market value). EQT pays Royalties to Plaintiffs and the Class Members based on its sales of Gas in an unmarketable condition at below-market prices, instead of based on the (higher) fair market value prices EQT could and should have obtained from the sale of Gas in a marketable condition. EQT breached its duty to market and underpaid the Royalties owed to Plaintiffs and the Class Members by selling Gas in an unmarketable condition and paying Royalties based on such below-market prices; and EQT also utilized such transactions to improperly impose on Plaintiffs and the Class Members the costs of placing the Gas produced by EQT in a marketable condition.

19. EQT uses a royalty payment statement (a/k/a "check stub") form that is common to Plaintiffs and the Class Members. The check stubs EQT prepared and sent to Plaintiffs and

the Class Members did not disclose all of the deductions or adjustments that EQT had made to Plaintiffs' and the Class Members' Royalty payments. For example, and without limitation, EQT has failed to disclose on its check stubs that EQT (improperly) deducted post-wellhead costs in calculating its Royalty payments to Plaintiffs and the Class Members. Plaintiffs and the Class Members were deceived by EQT's intentional omissions from the check stubs forwarded to them.

20. The full extent of EQT's wrongful acts and omissions and the resulting damages suffered by Plaintiffs and the Class Members, are 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 Gas produced by EQT, the calculation and charging/deduction of post-wellhead costs, the preparation of check stubs, and all other matters relating to EQT's calculation, payment, and/or reporting of its Royalty payments. Plaintiffs and the Class Members demand and are entitled to receive a full and accurate disclosure of and accounting for all such matters from which the full extent of EQT's wrongful acts and omissions and Plaintiffs' and the Class Members' resulting damages may be revealed.

21. The actions of Defendants as set forth hereinabove were willful and wanton and in utter disregard of the rights of Plaintiffs and the Class Members, or were done with reckless disregard for their rights, thus entitling Plaintiffs and the Class Members to punitive damages in an amount to be determined by the jury.

V. CLASS ACTION ALLEGATIONS

22. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Plaintiffs bring this

action on behalf of themselves and the Class, defined as follows:

All individuals and entities to whom EQT has paid or currently is paying Royalties under Leases on Gas produced by EQT from any of the Subject Virginia Counties, according to the business records maintained by EQT. The Class excludes (a) the Defendants; (b) the federal government; and (c) any person who serves as a judge in this civil action and his spouse.

Plaintiffs reserve the right to redefine the Class and/or establish subclasses as may be appropriate.

23. The members of the Class (“Class Members”) 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.

24. Although the precise number and identity of the Class Members can be ascertained from the books and records of EQT, Plaintiffs allege, upon information and belief, that the Class exceeds 100 members.

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

a. The methodology and underlying records used by EQT to calculate Royalties due to Plaintiffs and the Class Members;

b. The gas prices (per MCF and/or per MMBtu) used by EQT to make its Royalty payments to Plaintiffs and the Class Members on Gas produced by EQT, and the transactions upon which those gas prices were based;

c. Whether the gas prices used by EQT to make its Royalty payments to Plaintiffs and the Class Members on Gas produced by EQT were less than the fair market value

prices for such Gas;

d. The types of post-wellhead costs and other fees, costs, and expenses that were charged, directly or indirectly, by EQT to Plaintiffs and the Class Members;

e. Whether the post-wellhead costs and other fees, costs, and expenses charged by EQT to Plaintiffs and the Class Members are improper as a matter of law and/or fact;

f. Whether EQT has violated its duty to properly account and pay Royalties to Plaintiffs and the Class Members on Gas produced in the Subject Virginia Counties as a result of the acts and omissions described herein;

g. EQT's policies and practices relating to the preparation of Royalty payment statements (a/k/a "check stubs") sent to Plaintiffs and the Class Members;

h. Whether EQT has breached duties owed to Plaintiffs and the Class Members by not properly disclosing or itemizing, on EQT's check stubs, all deductions taken from Plaintiffs' and the Class Members' Royalty payments; and

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

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

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

action.

28. A well-defined community of interest and common questions of law and fact affect the parties represented and to be represented by this class action.

29. The claims of Plaintiffs are typical of the claims of the Class, and Plaintiffs have the same interests as the other members of the Class.

30. Plaintiffs are adequate representatives of the Class and will fairly and adequately protect the interests of the Class.

31. 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 probably 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

BREACH OF CONTRACT

32. Plaintiffs restate and incorporate herein by reference all of the allegations contained in the above numbered paragraphs.

33. The above-described conduct constitutes violations and breaches of the obligations which Defendants owe to Plaintiffs and the Class Members under their Leases.

34. Plaintiffs and the Class Members have been damaged as a result thereof and are

entitled to recover their actual damages from the Defendants, punitive damages, statutory or other interest at the maximum lawful rate, and any and all other relief deemed appropriate by the Court.

COUNT II

BREACH OF IMPLIED DUTIES

35. Plaintiffs restate and incorporate herein by reference all of the allegations contained in the above-numbered paragraphs.

36. At all times material to this Complaint, Defendants owed Plaintiffs and the Class Members certain obligations resulting from implied covenants and duties, including the duty to market, the duty to act as a reasonably prudent operator, and the duties of good faith and fair dealing.

37. The above-described conduct constitutes violations and breaches of the implied duties which Defendants owe to Plaintiffs and the Class Members as a matter of law.

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

COUNT III

BREACH OF FIDUCIARY DUTIES

39. Plaintiffs restate and incorporate herein by reference all of the allegations contained in the above-numbered paragraphs.

40. By virtue of the fiduciary duties and responsibilities of the lessee in any oil and

gas lease who undertakes and assumes the duty of handling the sales and accounting functions of the parties, Defendants had an affirmative duty to calculate and pay to Plaintiffs and the Class Members the true and correct Royalties due Plaintiffs and the Class Members, had an affirmative duty to account for all of the Gas Defendants produced, and had an affirmative duty to fully and accurately report and disclose all material information relating to Defendants' calculation of their Royalty payments.

41. The above-described conduct constitutes intentional violations and breaches of the fiduciary duties and responsibilities owed by Defendants to Plaintiffs and the Class Members.

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

COUNT IV

CONVERSION

43. Plaintiffs restate and incorporate herein by reference all of the allegations contained in the above-numbered paragraphs.

44. The above-described conduct constitutes an unlawful conversion of Plaintiffs' and the Class Members' Royalties and Royalty payments.

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

WHEREFORE, Plaintiffs respectfully demand as follows on behalf of themselves 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 Plaintiffs serving as Class Representatives for the Class and with counsel for Plaintiffs serving as Class Counsel;
2. That Plaintiffs and members of the Class recover full compensatory damages against Defendants;
3. That Plaintiffs and members of the Class recover punitive damages against Defendants as determined by a jury;
4. Pre-judgment and post-judgment interest on all amounts awarded hereunder;
5. Reasonable attorneys' fees and costs of this action;
6. All additional relief as may be just and proper and to which the Plaintiffs and members of the Class may be entitled; and
7. Trial by jury.

Respectfully submitted,

EDWIN F. LEGARD, JR.; ELIZABETH ANNE COX TRUST, by and through its Trustee, Elizabeth Anne Cox; and EMILY P. BAKER GENERATION SKIPPING TRUST, by and through its Trustee, William G. Baker, Jr.

Dated: June 28, 2010.

BY:


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